

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of Rule 14, paragraph "H," when it required Section Laborers Albert Ball, Walter H. Meyer, and Joe F. Tabor to suspend work on a regular assigned work day, September 5, 1946, between the hours of 11:00 A.M. and 4:00 P.M., for the purpose of absorbing overtime;

(2) That Section Laborers Albert Ball, Walter H. Meyer, and Joe F. Tabor shall be allowed four (4) hours' pay at the pro rata rate by reason of being required to suspend work between the hours of 11:00 A.M. and 4:00 P.M. on September 5, 1946.

EMPLOYEES' STATEMENT OF FACTS: Section Laborers Albert Ball, Walter H. Meyer, and Joe F. Tabor are employed on Section No. 9, at New Haven, Missouri. They have a regular assignment of eight (8) hours per day from 7:00 A.M. to 4:00 P.M. with a one-hour lunch period, six (6) days per week.

On September 4, 1946, they were called for service at 9:00 P.M. and worked continuously from 9:00 P.M. September 4 to 11:00 A.M. September 5, when they were instructed by their superior officer to lay off the remainder of their regular work period, and were notified to report back for duty at 7:00 P.M. September 5, 1946.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As outlined in the Employees' Statement of Facts, Section Laborers Albert Ball, Walter H. Meyer, and Joe F. Tabor have regular assignments of eight (8) hours per day. Their regular starting time is 7:00 A.M. They have a one-hour lunch period and normally complete their assigned tour of duty at 4:00 P.M., the above in accordance with the provisions of Rule 14 (a) of the current working agreement, which provides as follows:

"HOURS OF SERVICE, OVERTIME AND CALLS: Rule 14.
(a) Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work."

Rule 14 (b) of the current working agreement provides as follows:

The foregoing clearly indicates that the claimants were not required to suspend work during their assigned working hours "for the purpose of absorbing overtime." Claimants, after working their regular assignment, 7:00 A.M. to 4:00 P.M. September 4, were called out at 9:00 P.M. on same date after being off duty but five hours and worked fourteen additional hours or until 11:00 A.M. the following day. Had they not been relieved for rest, 11:00 A.M. to 7:00 P.M. September 5, but had continued in service until the time of their final release at 12:00 midnight, September 5, they would have been continuously on duty for a period of over forty hours, except for the five hours they were off duty from 4:00 P.M. to 9:00 P.M. September 4. Obviously, the relief of claimants from 11:00 A.M. to 7:00 P.M. September 5 was solely for the purpose of affording them some rest and was for their convenience. The suspension of work was not for the purpose of absorbing overtime because the men were actually being worked overtime hours.

The relief of claimants during that portion of their regular work period, 11:00 A.M. to 4:00 P.M. September 5, as previously stated, was solely for their convenience and the compensation allowed them for the actual service they performed on that date, as recited in Carrier's Statement of Facts, was strictly in accordance with Rule 14 (c) of the agreement, reading:

"... when less than eight (8) hours are worked for convenience of employees ... only actual hours worked or held on duty will be paid for."

The contentions of claimant organization that the claimants involved in this dispute were required to suspend work on a regular assigned work day for the purpose of absorbing overtime is not supported by the record in this case. To the contrary, the facts which have been recited in this submission substantiate the Carrier's position that the relief of claimants in the instance complained of was for the purpose of affording them some rest and was solely for their convenience.

For reasons aforementioned, Carrier submits the claim here presented by claimant organization is wholly without merit and is not supported by rules of the agreement relied upon by the organization.

When consideration is given to the facts aforestated, it is clearly evident there is no basis in equity nor under the agreement between the Carrier and its employees represented by the Brotherhood of Maintenance of Way Employees for the contentions that the three claimants named in this case are entitled to four (4) hours at pro rata rate on September 5, 1946, therefore, it is the position of the Carrier that the contentions of the employees should be dismissed and the claim, accordingly, denied.

OPINION OF BOARD: Section Laborers Albert Ball, Walter H. Meyer and Joe F. Tabor were employed by the Carrier to work on Section 9 at New Haven, Missouri. They were assigned to a regular eight-hour per day six-day per week assignment, the hours being from 7:00 A.M. to 4:00 P.M. daily with one hour lunch period from 12:00 noon to 1:00 P.M.

Due to an emergency created by a derailment on their section they were called for service at 9:00 P.M. on September 4, 1946, and worked continuously until 11:00 A.M. on September 5. They were then instructed by their superior officer to lay off for the remainder of their regular work period in order that they might have a rest, but were notified to report back at 7:00 P.M. on the same day. This they did, and they then worked until midnight. There is nothing in the record to show that the claimants made any request to quit at 11:00 A.M. or that they wanted a rest period or time off of their regular assigned work period.

The rules of the effective agreement between the parties, which are here applicable, are sufficiently set out in the statement of the parties.

It is the thought of the Carrier that the relief from work given to the claimants from 11:00 A.M. to 7:00 P.M. on September 5, since it was for

the purpose of affording them some rest after a long period of continuous work, was for their convenience and within the following provision of Rule 14 (c) of the parties effective agreement. This rule provides "* * * when less than eight (8) hours are worked for convenience of employes, * * * only actual hours worked or held on duty will be paid for."

While what the Carrier did under their circumstances may have actually been for the best interests of these claimants, although as evidenced by Rule 14 (f) 1 of their agreement the parties certainly contemplated that longer periods of continuous work might be required of an employe during an emergency, nevertheless, we think the provision upon which the Carrier relies is intended for the benefit of the employe and what is referred to therein as "for convenience of employes" is not for the Carrier to determine in the first instance.

Under the circumstances disclosed by the record we do not think the Carrier was entitled to cut the working hours of a regularly assigned employe, as here, to less than eight hours per day in the manner and for the reason as it was here done.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1947.