

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Management violated the provisions of the current working agreement between the Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees when it did not allow A. DiDomenico, B. Putnam, Fred Day, D. Lathrop, R. Tuttle, J. Desorbe, J. DeLuke, P. Izzo, A. Mazzarella, J. Orologio, S. Mazzarella, J. Moffre and all other monthly-rated employees who have been required to perform service on Sundays and holidays subsequent to August 17, 1946, pay in accordance with Rule 20(a);

(2) That A. DiDomenico, B. Putnam, Fred Day, D. Lathrop, R. Tuttle, J. DeSorbe, J. DeLuke, P. Izzo, A. Mazzarella, J. Orologio, S. Mazzarella, J. Moffre and all other monthly-rated employees who have been required to perform service on Sundays and holidays subsequent to August 17, 1946, be allowed pay for such service in accordance with the provisions of Rule 20(a).

EMPLOYEES' STATEMENT OF FACTS: Rule 20(a) of Agreement between the Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees dated November 15, 1943 provides as follows:

RULE 20. BASIS OF PAY FOR MONTHLY RATED EMPLOYEES.

"(a) Employees working on a monthly basis will be paid a flat monthly salary covering all services rendered without additional payment for overtime, Sundays or holidays, and without deduction from the flat monthly salary account curtailment in hours or days worked, subject to the following agreed to modifications:

Employees covered by this rule required to work overtime in the following circumstances will be allowed pay at overtime rate, pro rated on 243 hour base:

1. When regular assigned hours are increased.
2. When regular assignment is changed to include Sundays or holidays.
3. When unusual overtime is worked in an emergency caused by wrecks, floods, snow storms, etc."

Sundays or holidays," except as provided in the second paragraph of Rule 20 (a).

The circumstances under which a monthly rated employee is paid overtime are clearly set out in the second paragraph of Rule 20 (a). First, the regular assigned hours must be increased; or Second, the regular assignment must be changed to include Sundays or holidays; or Third, overtime in excess of three (3) hours must be worked. None of these conditions were met and no overtime is due the monthly rated employees concerned in this case. It is the Employees' contention that work performed on Sundays and holidays during the normal hours of the week day assignment is overtime. This contention is not supported by the rule which says that "Employees working on a monthly basis will be paid a flat monthly salary covering all services rendered **without additional payment for overtime, Sundays or holidays.**" To grant Employees' contention in this case would be, in fact, the elimination of the words "Sundays or holidays" from the language contained in the first paragraph of Rule 20 (a). In other words, the Employees are asking that the rule be applied as though the words "Sundays or holidays" were not a part of the rule.

The monthly rates of the employees concerned in this case are based on 243 hours per month, as stated in the second paragraph of Rule 20 (a). Overtime rate is based on these hours and increases are granted based on these hours even though service performed on Sundays and holidays is very infrequent.

It is the Carrier's position that no payment in addition to the monthly rate is due for service performed on Sundays and holidays during the normal assigned hours of the week day assignment. Rule 20 (a) covering payment of monthly rated employees is clear and provides for no such payment. Carrier respectfully requests claim be denied.

OPINION OF BOARD: The System Committee of the Brotherhood of Maintenance of Way Employees contends Carrier violated the terms of their Agreement when it did not pay certain named employees and all other monthly rated employees, when required to perform service on Sundays and holidays subsequent to August 17, 1946, in accordance with Rule 20 (a) and asks that they be paid in accordance therewith, that is, the rate of time and one-half when these employees were required to work more than three hours on those days. In other words, one-half time in addition to the regular compensation that has already been paid.

The claim covers work performed on Sundays and holidays during the hours regularly assigned on week days, or not more than three hours in excess thereof, by monthly rated employees whose regular assignment did not include those days.

Rule 20 (a), as revised February 14, 1946, provides:

"Employees working on a monthly basis will be paid a flat monthly salary covering all services rendered without additional payment for overtime, Sundays or holidays, and without deduction from the flat monthly salary account curtailment in hours or days worked, subject to the following agreed to modifications:

Employees covered by this rule required to work overtime in the following circumstances will be allowed pay at overtime rate, pro rated on 243 hour base:

1. When regular assigned hours are increased.
2. When regular assignment is changed to include Sundays or holidays.
3. When overtime in excess of three (3) hours is worked."

It will be observed that by the first paragraph of the foregoing rule that it is specifically provided that if employees working on a monthly rated basis

perform services on Sundays or holidays that they will not be additionally paid because thereof. Consequently, unless items 1, 2 or 3, under the second paragraph of the rule specifically abrogate such provision the claim here made is without merit.

Item 1 has no application here. Item 2 has no application here other than to emphasize the fact that work performed on Sundays and holidays is, under the first paragraph of the foregoing rule, not subject to an overtime rate. Item 3 includes generally all work performed, when in excess of three hours, other than during the hours regular assigned and would normally include work done on Sundays and holidays, when those days are not included as part of the regular assignment. However, item 3 is general in its character, whereas, the provisions of paragraph one are specific as to Sundays and holidays. In the construction of contracts specific provisions are controlling over those that are general in their character. We, therefore, come to the conclusion that the general provision of item 3 do not abrogate the specific provisions of the first paragraph of the rule as to Sundays and holidays and is not applicable to work performed on those days under the circumstances as here shown.

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1949.