

Award No. 4852
Docket No. MW-4813

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON AND MAINE RAILROAD**

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

(1) That Acting B & B Foreman Armand Perreault, Portland Division, be paid, at the proper rate, for all overtime worked by him during the period July 7 to July 19, 1947.

EMPLOYEES' STATEMENT OF FACTS: Mr. Armand Perreault was at the time this claim arose, Assistant Foreman in B. & B. Carpenter Crew under the supervision of Foreman S. E. Newlin.

During the period commencing Monday, July 7, 1947, Assistant Foreman Perreault became Acting Foreman in place of Foreman Newlin who was on vacation. Perreault continued as Acting Foreman until the close of work July 19, 1947.

During the period from July 7th to July 17th, excepting Saturday, July 12th, and Sunday, July 13th, this B. & B. Crew was engaged in building a bridge for a sidetrack to the Saco-Lowell Shops at Biddeford, Maine. The headquarters for this crew was its Camp Cars which were located at Old Orchard Beach, Maine. The distance between Biddeford and Old Orchard Beach is about 4½ miles. It was therefore necessary that Acting Foreman Perreault and this crew travel by motor car every day, during the period named, between these two referred to locations.

No other Assistant Foreman was assigned to assist Acting Foreman Perreault during this period. Foreman Perreault personally supervised the work in hand at Biddeford at all times, and returned with his crew to the camp cars at Old Orchard Beach each day arriving at the designated quitting time for this crew.

A portion of the camp cars is partitioned off and set apart for the use of the Foreman of the crew as his sleeping quarters and his office. A desk is provided and all the necessary stationery supplies, time sheets, work report forms and such materials are kept herein for the use of the Foreman in making out his required daily reports.

On dates referred to in this instant claim, Acting Foreman Perreault made out the necessary daily reports and other "office" work in overtime hours. He entered such overtime on his time return and daily classification of work report. The daily classification of work report was mailed daily to his B. & B. Supervisor H. R. Richardson at Dover, N. H. During this time Perreault worked overtime as follows:

hour on two (2) days; one (1) hour and fifteen minutes on one day; one (1) hour and thirty (30) minutes on three (3) days; one (1) hour and forty-five (45) minutes on one (1) day; two (2) hours on one (1) day. Carrier declined to pay the overtime claimed during the week ending Thursday, July 10, 1947. This should have been ample notice to Claimant, if any was necessary, which Carrier asserts was not, since Claimant was an Assistant Foreman, that he was violating Rule 30-B. Claimant showed overtime on his time returns for the week ending July 17, 1947, a larger amount than for the previous week, and this claim for overtime was likewise denied. Possibly Carrier should have applied discipline to Claimant for his violations of Rule 30-B, but Carrier, knowing that some of its Maintenance of Way foremen deliberately choose to spend a little of their own time in filling out the required forms, and also knowing that Claimant was fully aware of this fact, determined not to apply discipline but merely to advise Claimant that his claim would not be paid because he had made no attempt to secure authority to work overtime, and had he so attempted he would have been told not to do so. The local official was very much surprised when overtime was claimed for the second week after having been denied for the initial week.

As a scrutiny of the Exhibits will clearly indicate, very little time is required to fill them out, particularly if currently kept up. Nearly all of the Maintenance of Way Foremen keep them made up currently and Claimant, as an Assistant Foreman was well aware of this fact. In addition, Claimant had ample time during his regular hours to fill out these forms. It appears very peculiar to Carrier that Petitioner should suddenly, after years of operation under the present and prior agreements without any such claims, make an issue over such a matter as this. While the instant case is, of itself, of minor importance and the amount of money involved is small, the principle, if sustained, would be far reaching indeed. It would mean that the provisions of Rule 30-B had been set aside. Every foreman would feel free to "work overtime" on the slightest provocation. Carrier would have surrendered its control over the "working of overtime" and would be at the mercy of its employees.

There is absolutely no justification for the amount of time claimed and the claim should be denied.

SUMMARY: Carrier has shown clearly that the claim of Petitioner should be denied because—Claimant had no authority to "work" overtime; no emergency existed; the amount of time claimed is obviously excessive; the Third Division would be either writing a new rule or deleting the present rule (30-B) if it sustained the claim.

OPINION OF BOARD: From July 7, 1947 to July 19, 1947, claimant became Acting Foreman in the stead of Foreman Newlin who was on vacation. Claimant made out his daily reports and performed other "office" work in overtime hours. He claims pay for the time thus worked at the overtime rate.

The decision is controlled by Rule 30-B, current Agreement which provides:

"No overtime hours will be worked without authority of a supervising officer, except in case of emergency where advance authority is not obtainable."

Claimant contends that there were no facilities available at the location of the work and consequently the claimed overtime work could not be performed within his assigned hours. His remedy was to contact his superior with reference to the alleged overtime. No overtime may be claimed unless authorized except in case of emergency where advance authority is not obtainable. The work here performed was not emergent within the meaning of the rule.

The Organization contends that a printed instruction on a form designated Daily Classification of Time, authorizes this overtime. The instructions

in part say: "This classification to be made at the close of each day's work and to be sent in duplicate to Supervisor by first train mail." This instruction does not authorize overtime work. The instruction contemplates that the foreman shall make the required reports at the close of each day's work and within the period of his assignment. This construction has been put upon this rule for more than 25 years by the parties. If claimant performed this work on overtime hours he did so for his own convenience and without the authority of the Carrier. To permit employees to judge when and how much overtime they should work, would depart from the practices followed and subject the Carrier to numerous claims for overtime over which it had no control. No such interpretation was ever intended. Claimant has two ways to comply with the Agreement: (1) He can fill out his reports on his tour of duty, (2) He can obtain authority for the allowance of overtime. He may not determine to work overtime without authority to do so except in cases of emergency. If he elects to fill out his reports after assigned hours for his own convenience and without authority, his claim is in conflict with Rule 30-B and is not payable by the terms of the Agreement. A denial award is in order.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1950.