

Award No. 4952

Docket No. MW-4914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 Assistant Track Foreman Carl Frandino and certain other trackmen should have been paid at time and one-half rate from the time called for emergency service on October 6, 1945 until the starting time of their regular assignment on that date, as provided for in Rule 19 of the effective agreement;

(2) That the claimants be reimbursed for the difference between what they received and what they should have received if properly paid in accordance with the provisions of Rule 19 of the effective agreement.

EMPLOYEES' STATEMENT OF FACTS: On October 6, 1945, Assistant Track Foreman Carl Frandino and Trackmen Fred R. Steves, John T. Smith, Charles E. Carpenter, Henry Crispino, Carmelo Butto and Francesco Caruso, who were employees on Section K-1, Champlain Division, were called to report to work because of a derailment at Fort Ticonderoga.

These employees were called between 2:30 a.m. and 2:50 a.m. They reported for work as soon as they could arrive at their designated assembling point and continued to work to and beyond the start of their regular assignment.

For the period of time which elapsed between the time they were called and 3:15 a.m., the employees received no compensation. From 3:15 a.m. until 4:45 a.m. they were compensated at the straight time rate of pay. From 4:45 a.m. until the start of their regular assignment, they were compensated at the time and one-half rate of pay.

POSITION OF EMPLOYEES': It is the position of the Employees that the Carrier improperly compensated the claimants involved in this claim when it did not pay them at the time and one-half rate of pay from the time they were called until the start of their regular assigned work period on October 6, 1945.

Rule 19 of the effective agreement reads as follows:

"Rule 19. CALLS. Employees notified or called to perform work not continuous with the regular work period and reporting within a reasonable time, will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two

purposes, starts when they begin work. Likewise, in accordance with Rule 15 (f) of the Agreement, a group of employees must have a designated or initial point to assemble. As the employees performed no service between 3:15 A.M. and 4:45 A.M., but were traveling to the point of work, the allowance of straight time pay was proper and provided for in Rule 23 (a). The Committee has failed to apply this rule under which it has been agreed that employees, traveling at the direction of the Management will be paid.

This Carrier has been the subject of claims of a like nature which were brought before the Third Division, identified as:

Docket No. MW-2236	Award No. 2305
MW-2237	2306
MW-2238	2304
MW-2239	2307
MW-2240	2308
MW-2241	2309
MW-3142	3319

All the above claims were denied and the Carrier respectfully requests that like consideration be given instant claim.

OPINION OF BOARD: On October 6, 1945, claimants were called at Whitehall, New York for emergency work due to a wreck at Fort Ticonderoga. All claimants reported at the tool house at Whitehall at 3:15 a.m., at which time they commenced work. They worked until the commencement of their regular shift at 7:00 a.m., then worked their regular shift and were released from work at 4:00 p.m., after which they returned to Whitehall by motor car arriving at 4:15 p.m. The two employees assigned to call the others were allowed overtime pay from 2:45 a.m. to 3:15 a.m. All were allowed travel time at pro rata rate from 3:15 a.m. to 4:45 a.m. They received pay at time and one-half from 4:45 a.m. to 7:00 a.m. They received the assigned rate of their position from 7:00 a.m. to 4:00 p.m., minus a one hour lunch period, and travel time at pro rata rate from 4:00 p.m. to 4:15 p.m. The Organization contends that claimants should be paid time and one-half from the time called until the beginning of their regular work period at 7:00 a.m.

The controlling part of the Agreement is contained in Rule 19, current Agreement as follows:

"When regular employees are called under this rule and work through to their regular assigned starting time and from then on to completion of their regular assigned eight (8) hours, it is understood that they will be paid under the Call Rule from the time called up to the start of the regular assigned tour hours at time and one-half time, and for the regular assigned hours of that day at the pro rata rate."

The foregoing is a rule limited in application to a particular situation specifically set forth in the rule. The case before us comes squarely within the particular situation described in the rule and consequently the time and one-half rate therein provided is applicable. The Carrier contends that Rule 15 (f) controls. It provides that "Except as otherwise provided, employees' time will start and end at designated tool houses, outfit cars, camps, or shops." Rule 19 is clearly intended as an exception to Rule 15 (f). Rule 19 is a special rule and Rule 15 (f) is general. Special rules prevail over general rules and leave the latter to operate outside the former. This interpretation is supported by Award 3319 although the precise point was not at issue in that case. Awards 2304 to 2309, inclusive, cited by the Carrier, are distinguishable in their facts. The specific situation described in Rule 19 did not exist in those cases. They sustain the Carrier in paying pro rata rate for travel time from 4:00 p.m. to 4:15 p.m., but they did not otherwise sustain the position of the Carrier. An affirmative 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.