

Award No. 5053

Docket No. MW-4919

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHWESTERN PACIFIC RAILROAD COMPANY**

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

(1) That the Carrier violated the provisions of the Agreement when it assigned Section Foreman M. J. Curtin duties that required service outside of his assigned hours and failed to compensate him for such service;

(2) That Section Foreman M. J. Curtin be paid for one (1) hour at the time and one-half rate for each day, June 16 to 28, 1947, both dates inclusive, exclusive of June 22, 1947, account of being assigned in the manner referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. J. Curtin is regularly assigned to the position of Section Foreman, Section No. 101, San Rafael, California.

Effective June 16, 1947, M. J. Curtin was directed by the Carrier to assume the duties of Section Foreman on Section No. 2, San Rafael, California, in addition to his own duties as Section Foreman on Section No. 101.

The additional duties so assigned to Section Foreman Curtin included the responsibilities and supervisory duties usually performed by the Section Foreman regularly assigned on Section No. 2. These duties included the preparation and submission of time-rolls, requisitions and reports to cover employees on Section No. 2, San Rafael.

The duties and responsibilities which M. J. Curtin was required to assume in connection with the work on Section No. 2 were outside of the duties and responsibilities he was regularly assigned as Section Foreman of Section No. 101.

Because of the volume of work assigned to him during his regular tour of duty, M. J. Curtin found it necessary to compile the reports required in connection with his extra duties on Section 2 after the expiration of his regular assigned hours.

Claim for additional compensation because of being required to perform additional duties was presented in behalf of Section Foreman Curtin and such claim was declined.

responsibilities and supervisory duties of a foreman, which such employes may be required to perform outside of the assigned hours of the general force which they supervise, and for which said rule expressly provides the measure of payment to be "a monthly rate to cover all such services rendered."

Insofar as the claimant is concerned during the period involved in this claim, he was paid a monthly rate to cover all services rendered by him that were incident to his responsibilities and supervisory duties as a foreman, including those duties that were necessary in making time-rolls, requisitions and reports for the general force which he supervised; therefore, the carrier submits there can be no proper basis under Rule 27 for payment of any additional compensation.

The Division will note that Rule 27 provides only for the payment of "a monthly rate" to cover the performance by foremen of services of the character here involved, and that said rule does not make any provision for the payment of any additional compensation, overtime or otherwise, for such service, in view of which the carrier submits that said rule instead of providing a basis to sustain the overtime payment here demanded by petitioner, conclusively establishes that the claimant is not entitled to any additional compensation, and that the payment made by the carrier was proper.

CONCLUSION

The carrier asserts that the claim in this docket is without basis or merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: The claim is that the Carrier violated the Agree-hours in requiring the claimant to perform service outside of his assigned hours without compensation.

Rules 21 and 27, cited by the Organization, provide as follows:

"Rule 21. Except as otherwise provided in these rules, time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and one-half rate, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular work period.

Employes required to work continuously from one regular work period to another shall receive time and one-half on actual minute basis for the second regular work period and for each regular work period thereafter when the service is continuous.

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In the application of this rule the starting time of new employes temporarily brought into the service in emergencies shall be considered as of the time they commence work or are required to report for work.

Employes will not be required to suspend work during regular hours for the purpose of absorbing overtime."

"Rule 27. Foremen have responsibilities and supervisory duties which require service in excess of the hours assigned for the general force, such as making time-rolls, requisitions, and reports, and will be paid a monthly rate to cover all such service rendered."

An analysis of the Rules under Article V entitled "Hours of Service, Overtime and Calls" indicates that Rule 27 is in the nature of an exception. This rule recognizes that Foremen have duties that may require the compiling of records and reports beyond the hours assigned to the general force. It is stipulated that the Foremen's monthly rate covers all such services.

The evidence establishes the facts to be that on the days in question the gangs were combined and for eight days worked exclusively on Section 2 and for four days worked exclusively on Section 101.

The Organization does not dispute the right of the Carrier to thus combine gangs, and makes no claim for additional compensation during the "hours assigned for the general force." If the Carrier can require the Foreman to take on the supervision of additional laborers during the day, it can also require the Foreman to perform the minor bookkeeping resulting from their addition to the gang. The evidence shows the existence of a recognized practice that no additional payment is made to Foremen under these circumstances. Award Number 3627 relied on by the Organization is a claim for a "call" and the facts in that case have no significant relation to the facts here presented.

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 employee 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.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.