

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) That the Carrier violated the Agreement by failing to compensate Section Laborer Henry Kurth and Oscar Evans, Jr., Chicago Heights, at the double time rate of their positions for their services as rendered between 12:00 Midnight and 7:00 A.M., January 2, 1948;

(2) That the Carrier reimburse the Claimants for the difference in compensation received at the time and one-half rate and what they should have received at the double time rate for the services rendered during the period referred to in Part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. Henry Kurth and Oscar Evans, Jr. are section laborers in Section Crew No. 4 of Chicago Heights. These two section laborers were called for emergency duty because of a snow storm January 1, 1948. They worked continuously from 7:00 A.M., January 1, 1948, until 7:00 A.M., January 2, 1948. For such services they were paid the time and one-half rate during this entire period.

The regularly assigned hours for Section Crew No. 4 is 7:00 A.M. to 4:00 P.M. with one hour lunch period.

The Employes have contended that these claimants should have been compensated at the double time rate beginning at 12:01 A.M., January 2nd, until 7:00 A.M., the same date because of the provisions of the double time rule.

The Carrier has contended that the employes have no regular shift on January 1st, since it was a holiday and therefore were not entitled to any double time rate for services referred to above.

The agreement in effect between the two parties to this dispute, dated May 15, 1925, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: During the time that this claim was handled on the property, there was no dispute between the Carrier and the Employes regarding the time that the employes were called for service, or the hours during which service was rendered.

As stated in the Employes' Statement of Facts, Section Laborers Kurth and Evans were called at 7:00 A.M. on January 1, 1948, and worked con-

computed from the regular starting time of his shift. Time worked continuous with and preceding the regular work period is not used in computing double time and a break in the continuity of service following the regular work period will also cancel the double time penalty. Where the day's service has terminated, employees may be called for service not continuous with the regular work period and compensated at the rate of time and one-half for all time worked, with no provision for a double time rate.

If it had been the intent to apply to Sunday and holiday service the same provisions which apply to the regular work week, there would have been no necessity to provide in the Agreement specific rules pertaining to Sunday and holiday service. It would have been sufficient to merely set out one rule applicable to service on all days and no special mention would have been necessary for Sunday and holiday service. Under the circumstances, it is Carrier's position that the provisions of Article 4 providing for payment of double time after sixteen (16) hours of continuous service, coupled with the regular work period, does not apply to service on Sundays and holidays and that the provisions of Article 5, providing for payment of the time and one-half rate on Sundays and holidays, are controlling in the instant claim.

Carrier, therefore, respectfully submits that this claim is without merit and petitions your Honorable Board that it be denied.

Carrier affirmatively states that all data contained herein has been handled with representatives of the employees.

OPINION OF BOARD: Claimants are section laborers in Section Crew No. 4, Chicago Heights, assigned 7:00 A.M. to 4:00 P.M. with a lunch period of one hour. Because of a snow storm, they commenced work at 7:00 A.M. on January 1, 1948, and worked continuously until 7:00 A.M. on January 2, 1948. They were paid the time and one-half rate for the whole period. The Organization contends that they were entitled to the double time rate after 12:01 A.M. on January 2, 1948.

The controlling provision of the Agreement is Article 4 (a), Agreement dated December 8, 1944, which provides:

"ARTICLE 4, OVERTIME AND CALLS. (a) Time worked preceding or following and continuous with the regular eight (8) hour work period, exclusive of meal period, shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from the starting time of the employee's regular shift. Employees required to work continuously from one regular work period into another shall be paid at the rate of time and one-half for the first sixteen (16) hours work of the second or succeeding twenty-four (24) hour work periods, and thereafter double time until the beginning of the next regular shift or until relieved.

In the application of this Paragraph (a) to new employees temporarily brought into the service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report."

Carrier contends that no provision is made for double time on Sundays and holidays under this rule. In this the Carrier is in error. The rule provides for double time after 16 hours' continuous service in any 24 hour period computed from the starting time of the employee's regular shift. This simply means that in computing double time for work in excess of 16 continuous hours of service, the starting time of an employee's regular shift constitutes the starting point of the 24 hour period whether during regularly assigned days or otherwise. The Rule does not mean that double time is allowable only on days on which the employee holds a regular assignment; it means

that double time accrues in any 24 hour period in which more than 16 consecutive hours are worked and, in determining the beginning of the 24 hour period, the starting time of his regular assignment will be used. The claim should be sustained.

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 18th day of December, 1950.