Award No. 5756
Docket No. MW-5742

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective agreement when they failed to compensate Section Foremen Duvall, Deaton and Young, together with the members of their crews, at their respective time and one-half rate, for service performed during the hours of their regular assignment on January 11, 1949;

(2) The employes referred to in part (1) of this claim be paid the difference between what they did receive at their respective straight time rate of pay and what they should have received at their respective time and one-half rate of pay for service performed subsequent to their regular assigned starting time on January 11, 1949.

EMPLOYES' STATEMENT OF FACTS: On January 10 and 11, 1949, Section Foremen Duvall, Deaton and Young and the members of their respective crews, were assigned to work that was occasioned by a derailment at Hartford, Kansas.

The above named Foremen and the members of their crews, had worked the regular hours of their assignment on January 10 and without any break in the continuity of service, were taken to the derailment site and continued to work until 2:00 A. M. January 11, 1949. At 2:00 A. M., the crew of the Wrecker that was being used in rerailing the cars, was required to tie up.

Section Foremen Duvall, Deaton and Young and the members of their crews were not required to perform any work during the period from 2:00 A. M. to 7:30 A. M. on January 11, 1951. They remained at the derailment site and were not returned to their headquarters or permitted to go to bed, as the Carrier wanted them available for duty at 7:30 A. M. the following morning. At 7:30 A. M. they resumed work and continued to work until 10:45 P. M., January 11, when they were released.

The Carrier originally contended that the employes were not entitled to any compensation from 2:00 A. M. to 7:30 A. M. on January 11, as the Wrecker

As the record definitely and unmistakably establishes without a question of doubt that these employes did not **work continuously** with their regularly assigned eight-hour work period on January 10, 1949, to their regularly assigned eight-hour work period on January 11, 1949, it is perfectly clear and undebatable that they were not held on duty or required to work **in excess of 24 hours** and therefore no sound or logical basis exists for the claim that these employes should be paid time and one-half instead of straight time for regularly assigned hours worked on January 11, 1949.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The effective revised Agreement between the parties bears the date of July 1, 1945.

The claim here concerns work performed by three section crews on January 10 and 11, 1949.

The crews here involved had assigned hours 8:15 A. M. to 4:45 P. M. which included a 30 minute lunch period.

Due to a derailment Carrier directed that at the conclusion of the shift on January 10, 1949 the men were to proceed to the point thereof and assist in the clearance of wreckage. This was done and continuous work was performed until 2:00 A. M. January 11, 1949, at which time the actual performance of any duties ceased. Work was resumed at 7:30 A. M. on January 11, 1949 and continued until 10:45 P. M. on this date.

Article 9, Rule 2, reads as follows:

> "Time worked preceding or following and continuous with a regularly assigned eight-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 continuous hours of work in any twenty-four hour period computed from starting time of the employe's regular shift. Employes will not be held on duty or required to work more than 24 consecutive hours except where the emergency justifies it. If held on duty or required to work in excess of 24 hours they shall receive time and one-half and/or double time as the case may be on the same basis as the original 24 hours of duty. In the application of this Rule 2 to new employes temporarily brought into the service in emergencies, the starting time of such employes will be considered as of the time that they commence work or are required to report."

It is asserted that said Rule requires overtime pay when employes are either "worked" or "held on duty"; and that said employes were not "released from duty" either in the literal sense or within the contemplation of the Rules, as contended by the Carrier.

The Respondent takes the position that the employes were not worked or held for duty during the time in question, but in truth and in fact were released for rest, thus nullifying the contention that they worked continuously or in excess of 24 consecutive hours as is required by Article 9, Rule 2.

Article 9, Rule 2 reads in part "If held on duty or required to work in excess of 24 hours", clearly and without ambiguity states two contingencies by which overtime, or premium pay will be paid; that is, "if held on duty", or "required to work".

The record is clear that no actual work was performed between 2:00 A. M. and 7:30 A. M., a period of five hours and thirty minutes, on January 11. Likewise that the men during this time were in the caboose of a nearby work train.

Inasmuch as no actual work was performed the question for determination is whether or not the employes were "released" as the Respondent asserts or were "held for duty", within the meaning of the cited Rule as the Petitioner contends.

It is the opinion of the Board that the employes while admittedly not required to work, were likewise not released from duty. The fact that they were actually on a quasi "standby" or "call basis" is further substantiated by the fact that the Respondent voluntarily compensated the employes on a straight time basis for the hours in question.

In other words, under the circumstances of record these employes could not be in a "released" status and at the same time entitled to compensation.

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 Employes involved in this dispute are respectively Carrier and Employes 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: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.