Award No. 5805
Docket No. MW-5547

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: (1) The Carrier violated the effective agreement when it compensated Trackman Roy E. DeCotis at the straight time rate of pay instead of the overtime rate of pay for eight (8) hours' service rendered on August 5, 1950.

(2) Trackman Roy E. DeCotis be paid the difference between what he did receive at the straight time rate of pay and what he should have received at the time and one-half rate of pay for service rendered on August 5, 1950.

JOINT STATEMENT OF FACTS: Trackman Roy E. DeCotis held a regular assignment as such in Section Crew No. 250. DeCotis' work week as a Trackman was Monday through Friday with Saturday and Sunday as rest days.

The Patrol Crew in same district had a work week Tuesday through Saturday with Sunday and Monday as rest days.

A Helper in the Patrol Crew was assigned paid vacation from Tuesday, August 1, 1950, through Saturday, August 5, 1950.

Mr. DeCotis was assigned by his supervisor to temporarily fill in on the Patrol Helper's position and covered said position August 1 through August 5, 1950.

Mr. DeCotis was paid at straight time rate for Saturday, August 5, 1950.

Claim was filed for the difference between pro rata and time and on-half rate for service on August 5, 1950, and was declined by the Railroad.

POSITION OF EMPLOYES: The issue in this instant claim resolves the proposition as to a regularly assigned Trackman rendering service on a Monday through Friday basis with Saturday and Sunday as his assigned rest days and who is assigned temporarily to fill a vacancy of Patrol Helper, should be compensated at the time and one-half rate of pay for service performed on Saturday, an assigned rest day of the Trackman's position.

Rule 28 of the effective agreement reads as follows:

"Employes who are required to work on their rest days or the following holidays, i.e., New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and

The two paragraphs, above quoted, were taken verbatim from the Forty-Hour Week Agreement, except for reference to the proper rule of the controlling agreement at the end of each paragraph. Certainly, nowhere in either of these two paragraphs can the slightest reference be found to the **exercise of seniority.** Time and one-half for over forty (40) hours or for the sixth and seventh days does **not** apply when it is "due to moving from one assignment to another."

The Forty-Hour Week Agreement was negotiated, drawn up and signed by the most skilled operators for management and labor to be found in the railroad field. It was long in the process of collective bargaining. Does Petitioner infer that these skilled collective bargaining negotiators deliberately left something out of these two paragraphs? Carrier cannot conceive that this could be possible. Does Petitioner assert that it was the desire of these skilled negotiators that the Adjustment Board, or a Referee, would require a searching for intent, in order to determine the meaning of the underlined portions of these paragraphs? Carrier does not believe this could be true. Whatever may have been discussed during the negotiation of these two paragraphs is of little moment when the understanding reached is reduced to written terms as clear and unambiguous as the underlined parts of these paragraphs. Consider how simple and easy it would have been, if these skilled negotiators intended that the **exercise of seniority** was to be a controlling factor, for them to have inserted a few words to that effect. No, the utter absence of even the slightest reference to the operation of seniority destroys any vestige of doubt that seniority has any application here.

Petitioner in this docket is demanding time and one-half for work performed by Claimant on a regular work day of the assignment to which Claimant moved. This is not supported by any rule and must be denied. Petitioner also asserts that Claimant is entitled to time and one-half for work performed on Saturday, August 5, 1950, because he did as provided for in Rule 30-A. Rule 30-A does not require that the move from one assignment to another be in the exercise of seniority in order to void the imposition of punitive rate on Carrier. It clearly and unambiguously provides that time and one-half shall **not** be paid for work performed on the sixth and seventh days when "due to moving from one assignment to another." It is inconceivable that this language could be misconstrued. It means **precisely** what it says. Claimant worked six days in the calendar week of July 30-August 5, 1950, but, the work on the sixth day was **solely** "due to moving from one assignment to another," i.e., from an assignment as Trackman in Section Crew No. 250 to an assignment as Helper (Trackman) in Patrol Crew.

There is no possible argument which could serve to support this claim and it should be denied.

All factual data contained herein and argument in connection therewith has been brought to the attention of Petitioner.

OPINION OF BOARD: Claimant held a regular assignment as a trackman in Section Crew No. 250, his assigned days being Monday through Friday with Saturday and Sunday as rest days. A Helper in a Patrol Crew was regularly assigned to work Tuesday through Saturday with Sunday and Monday as rest days. Claimant was assigned to fill the Helper position from Tuesday, August 1 through August 5, 1950, while the latter was on vacation. Claimant was paid straight time for this work. He claims time and one-half for the 8 hours performed on Saturday.

The record discloses that claimant worked on Monday as a trackman in Section Crew No. 250. On Tuesday through Saturday following, he worked with another crew (Track patrol) on the position of a regular assigned employe on vacation. The Organization contends that claimant is entitled to the penalty rate for the Saturday worked for two reasons: (1) That it was his regularly assigned rest day, and (2) that it was work in excess of 40 hours in one work week. The Carrier insists that the straight time rate is proper

for the day in question because of an exception contained in the vacation rule, Rule 10 (a), to the effect that an employe designed to fill the position of another on vacation shall be paid the rate of such assignment or the rate of his own assignment, whichever is the greater.

We think this question has been settled by this Board contrary to the Carrier's position. Briefly summarized, our previous controlling awards hold that an ambiguity exists between the rest day rule and the 40-hour week rule on the one hand and the vacation agreement on the other. The rest day rule, Rule 28 of the current Agreement, provides that an employe working his rest day will be paid time and one-half. Rule 30 (b) and (c) provide in substance for the payment of time and one-half for all work in excess of 40 hours in each work week and for that done in excess of 5 days in any work week, except where such work is performed due to moving from one assignment to another or to or from an extra or furloughed list or when days off are being accumulated under another rule. These rules are not in harmony with the vacation agreement and the purposes it intended to accomplish. It is a rule of construction of contracts that meaning must be given, if possible, to all language used. All rules dealing with a subject, and the language of each, must be considered in determining the intention of the parties. The nub of the whole dispute stems from the meaning of the phrase "* * * except where such work is performed by an employe due to moving from one assignment to another * * *" contained in Rules 30 (b) and (c). We have construed this provision to mean as follows:

> "Rule 25 (c) is an outgrowth of the Agreement for the Establishment of a shorter (five day) Work Week. It was clearly the intention of that Agreement to reduce the hours of work of all employes to 40 hours per week whenever possible, and it provided for penalty pay of time and one-half to discourage work requirements in excess of 40 hours or five days per week. However, it was recognized that the rest days of different assignments would vary throughout the week to cover continuous service requirements. Thus when an assigned employe bid in and was assigned to another position in accordance with the rules, he would in some cases work more than five days per week due to the variance of the assigned rest days upon the two assignments. Hence, considering the purpose and intent of that agreement, it appears that the intent of the exception was to relieve the Carrier from liability for penalty pay in such situations because, acting in accordance with the rules, it could not avoid having the employe work more than 40 hours or five days in the work week. It does not appear to us that the Carrier is unable to avoid such work in the appointment of extra or furloughed employes to short vacancies or to positions pending assignment." Award 5494.

The foregoing conclusion was reached after a full consideration of the issues as is shown by the dissent filed by the Carrier members of the Division. We feel obliged to follow this construction of the rules and hold that unless work in excess of 40 hours or five days in a work week results from exercise of seniority rights which the Carrier cannot avoid, the time and one-half rate must be applied. See Awards 5113, 5421, 5464, 5495.

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 26th day of May, 1952.