

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS**

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

(1) That the Carrier violated the effective agreement when they required Welder G. B. Gaddy and Welder Helper C. W. Scott to perform travel and waiting time service in addition to performing the duties of their regular assignment and failed to compensate them for the time consumed traveling and waiting;

(2) That Welder G. B. Gaddy and Welder Helper C. W. Scott be paid at their respective straight time rate of pay for all travel and waiting time service rendered, in addition to the work of their regular assignment subsequent to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. B. Gaddy and Mr. C. W. Scott are regularly employed as Welder and Welder Helper respectively with headquarters at Pine Bluff, Arkansas. They are assigned on a Monday through Friday basis and regularly work from 7:00 A. M. to 4:00 P. M. with one hour out for meal period. For work performed outside of their regular assigned hours, they are compensated at their punitive rate of pay.

Prior to September 1, 1949, Mr. Gaddy and Mr. Scott were assigned on an all service rendered basis, and received no punitive pay for service rendered outside of their regular assigned hours, as their monthly rate of pay comprehended service 243½ hours per month. The basic monthly rate applicable to employees who were assigned on a 243½ hour per month basis, comprehended overtime work, and travel time service customarily required in connection with their assigned duties.

As a result of the National Forty Hour Week Agreement, which was effective September 1, 1949, the hours of service comprehended in the assignment of these employees was reduced to 169½ hours per month. In adjusting the monthly rate of pay in the manner agreed to by the National negotiating committees, Mr. Gaddy and Mr. Scott suffered a loss in their established monthly rate of approximately \$55.00 per month.

Claimants are paid a monthly rate under the provisions of Rule 7-17 and are, therefore, excepted from the provisions of the emergency road service rule, reading:

"7-18. EMERGENCY ROAD SERVICE -- Employees, except those paid monthly rate under Rule 7-17 and as provided by Rule 7-16, who are required by the direction of the Carrier to leave their home station, will be allowed actual time for traveling or waiting, during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home stations will be paid for at the pro rata rate."

CONCLUSION

1. Prior to September 1, 1949, Claimants were regularly assigned to road duties and compensated at a monthly rate for all services rendered, which covered all time whether working, waiting or traveling, as provided for in the applicable schedule rule (Rule 7-14 of the printed schedule agreement effective September 1, 1947).

2. Claimants monthly rates were adjusted effective September 1, 1949, as provided for in Section 2(b) of Article II of the Forty-Hour Week Agreement.

3. Subsequent to September 1, 1949, Claimants are being paid a monthly rate under the provisions of Rule 7-17, which has as its first paragraph the rule under which such employees were paid prior to September 1, 1949, modified to a certain extent but without any modification to that part of the rule relating to waiting or traveling.

4. Decision No. 8 of the Forty-Hour Week Committee (Exhibit No. 13) clearly states that the sixth paragraph of Section 2(b), Article II of the Forty-Hour Week Agreement applies to monthly rated employees represented by the Brotherhood of Maintenance of Way Employees regularly assigned to road service. It also states that the phrase "regularly assigned to road service" has the same meaning that it had under the individual agreements on the property prior to September 1, 1949.

5. The sixth paragraph of Section 2(b), Article II of the Forty-Hour Week Agreement stipulates that for such employees as are regularly assigned to road service, the rules providing for traveling time and starting time shall apply only to the extent that these rules were applicable prior to September 1, 1949.

Under the circumstances, it is the Carrier's position that rules providing for traveling time and starting time shall apply only to the extent that these rules were applicable prior to September 1, 1949, as set forth in the Forty-Hour Week Agreement and subsequently decided by the Forty-Hour Week Committee in its Decision No. 8 dated Chicago, January 10, 1950.

The rules in effect prior to September 1, 1949, and the established application thereof show that the pay provisions of the "Emergency Road Service" rule (quoted above) were never applicable to claimants.

As pointed out above, the claim is not supported by schedule rules and is not valid for any reason. The Carrier respectfully requests it be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties are in dispute over whether, under the effective Agreement by which their relationships are governed, Welder

Gaddy and Welder Helper Scott, employed by the Carrier at Pine Bluff, Arkansas, should have been since September 1, 1949, and should be henceforth paid at straight time rates for time spent in travel and waiting above the eight hours of service required in the performance of the duties regularly assigned for the above-mentioned positions.

This dispute must be determined by our decisions on what provisions of the Agreement are controlling and what interpretations thereof are proper. On these questions the Organization contends as follows: (1) Before September 1, 1949, the effective date of the Agreements inaugurating the 40-Hour Week, the Claimant employees were paid a monthly rate on an "all services rendered" basis. That is, hours spent in work, travel, waiting, or other matters above the regular monthly assignment of $243\frac{1}{2}$ hours per month were not paid for at punitive or other rates; and if fewer than this number of monthly hours were worked, the monthly pay was nevertheless for $243\frac{1}{2}$ hours. (2) After the above date the employees' monthly hours were reduced to $169\frac{1}{2}$ hours. The Agreement resulted also in a monthly loss of pay amounting to about \$55.00. (3) After this date the Agreement was changed so as to comply with the general intent of the introduction of the 40-Hour Week, namely the same weekly or monthly pay for the reduced work-week or work-month as had obtained previously for the longer week or month. That is, in respect to employees on positions like those of Gaddy and Scott the Agreement attempted to compensate for the loss in regular monthly pay by providing additional remuneration for overtime work, waiting time, travel time, and so on. (4) Gaddy and Scott were never, even before September 1, 1949, "regularly assigned for road service". They had a home station and normally worked only there. But under the Agreement effective before that date, the prevailing all service method of pay prevented them from receiving additional pay for occasionally required travel time. (5) After September 1, 1949, they again were not regularly assigned for road service. But now Rule 7-18 was supposed to provide pro rata compensation for their infrequent, occasional road travel, in order to effectuate the general intent of the 40-hour program. (6) If the Carrier's contentions (see below) are held correct, monthly rated employees like Gaddy and Scott are bound to suffer gross inequities in relation to hourly rated employees doing the same class of work. The latter receive added pay for travel and other extra time. (7) The only employees now not compensable for road travel are of the sort mentioned in the second paragraph of present Rule 7-17 (see below), for example, traveling auditors and inspectors. (8) Award No. 5704 of this Board on a very like case substantiates the Organization's position.

The record shows that the Carrier's main arguments are as follows: (1) The Agreement effective September 1, 1949, did try to effectuate the principle of no loss of take-home pay after the introduction of the 40-Hour Week. But the effectuation of this principle did not include extra compensation for travel time in respect to monthly rated employees like Gaddy and Scott. (2) The reasons for this conclusion are these: (a) Such employees were regularly assigned for road service (i. e., travel) before September 1, 1949; and they have been so assigned since that date. This is so, even if during one or more months they are wholly confined to their home stations. The fact of their liability to call for such service establishes this sort of assignment. (b) Therefore such employees are subject not to Rule 7-18 of the effective Agreement but to Rule 7-17. The first paragraph of this Rule is the same as Rule 7-14 of the Agreement effective before September 1, 1949, which applied to these employees in those days. The second paragraph of Rule 7-17 is a replica of paragraph 6 of Section 2 (b) of Article II of the National 40-Hour Week Agreement of March 19, 1949. The import of this paragraph is that employees like Gaddy and Scott are not to receive extra compensation for travel time. The paragraph was inserted in the present Agreement by direction of the Forty-Hour Week Committee in its Decision No. 8, Section 4. (c) If the pay for such employees on travel time was previously controlled by Rule 7-14, it is now, because of the facts just mentioned, controlled by Rule 7-17. (3) If the Organization and its members feel that monthly rated employees like Gaddy and Scott are in an inequitable

position on travel time pay vis-a-vis hourly rated employees doing similar work, the proper way to redress such inequity is through direct negotiation of a new provision with the Carrier rather than through an attempt to obtain an Award from this Board which would be counter to the intent of the decision by the above-mentioned Committee. (4) The facts underlying Award 5704 of this Board differ materially from those in the instant case. In the other case the Claimant had not been regularly assigned to road service before September 1, 1949. She was therefore said to be entitled to compensation for such service after that date. But in the instant case the Claimants were on such service before such date. Therefore, as shown above, they are not entitled to the extra pay they seek.

The basic issue in this case thus turns out to be this: Were Gaddy and Scott regularly assigned to road service before September 1, 1949; and have they been so assigned since then? It seems to us from the record that the Organization has not successfully refuted the Carrier's affirmative answers to these questions. And it follows, then, that we must hold with the Carrier's position in respect to the circumstances developed in this case.

It may be, as the Organization contends, that such a finding will create or continue the existence of inequities for employees like Gaddy and Scott in relation to hourly rated employees doing similar work. If this is so—and we here make no finding to this effect—we think we must agree with the Carrier that it is the Agreement which is defective and which furnishes, through negotiation, the appropriate avenue for redress.

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 Carrier has not violated the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.