

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the agreement on March 4, 1952, when it required Section Foreman R. A. Story to suspend work on his regularly assigned territory at Wichita, Kansas, and assigned an extra gang foreman to replace Section Foreman Story during such period of suspension:

(2) Section Foreman Story be allowed eight (8) hours' pay at his double time rate and an additional eight (8) hours' pay at his half time rate, account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. A. Story is the Section Foreman regularly assigned to jurisdiction over the territory and track forces assigned to Section No. 16 at Wichita, Kansas.

Mr. Story was regularly assigned to a work period from 8:00 A.M. to 5:00 P.M., which included a one-hour meal period, with Saturdays and Sundays as his assigned rest days.

On Monday, March 3, 1952, Section Foreman Story was instructed to continue working after the expiration of his regularly assigned work period in order to clean switches account of snow and ice.

On the same date, an extra gang foreman was similarly instructed to continue working after the expiration of his regular assigned work period, which was the same as Foreman Story's assigned work period.

The extra gang foreman was temporarily relieved from his overtime service (at approximately 10:00 P.M.) after having worked approximately 14 continuous hours. He was, however, instructed to return to work at 12:00 midnight after approximately a two-hour relief period, for the purpose of relieving Foreman Story.

Foreman Story was instructed to discontinue his overtime service when the extra gang foreman reported for work at 12:00 midnight and was further instructed to return to work at his regularly designated starting time for his regular work, which was at 8:00 A.M. on the following day.

The Employes contended that Foreman Story was entitled to protect all available overtime work on his assigned territory and that he was deprived

5347 supports this same conclusion not solely upon a question of judgment but upon the question of Agreement application even when the Carrier requires employees to work overtime.

As to Rule 14, Section II (h), it is the Carrier's position that it is so obviously not applicable that little comment is required. That rule prohibits employees being required to suspend work during any regular assigned work day period for the purpose of absorbing overtime. The regularly assigned work day period for this claimant was 8:00 A.M. to 5:00 P.M., with an hour meal period excluded, on March 3 and the same on March 4; the claimant worked those hours on each of those dates. While this fact completely eliminates Rule 14, Section II (h) it might be said in passing that relief of this claimant at midnight March 3 was not for the purpose of absorbing overtime, but for the purpose of affording him proper rest for future service in an emergency.

It is the position of the Carrier that the Employees have failed to show any Agreement support for, or merit in, their claim.

(Exhibits not reproduced).

OPINION OF BOARD: Wichita, Kansas, experienced a severe snow storm on March 3, 1952. At that time Claimant R. A. Story was foreman of a yard section crew assigned to Section No. 16 at Wichita. The storm would have blocked yard operations had snow and ice not been kept out of the Carrier's switches. In this emergency situation Foreman Story's crew worked its regular hours from 8:00 A.M. to 5:00 P.M., including the meal period, on March 3, and was then held on duty until 12:00 Midnight, a total of 16 continuous hours. Then his crew was relieved at 12:00 Midnight by an extra gang crew. The Record contains a photostatic copy of the extra gang time roll, which shows that the extra gang crew had worked from 7:30 A.M. to 4:30 P.M. on March 3, and overtime from 4:30 P.M. to 6:30 P.M. the same date; then it had reported back for duty at 11:00 P.M., March 3, and protected the service through to 7:00 A.M., March 4. Claimant Story's crew then reported for duty at 8:00 A.M., March 4, and worked its regular hours from 8:00 A.M. to 5:00 P.M.

The Employees contend that the Carrier violated the applicable agreement in relieving Foreman Story from duty at 12:00 Midnight and using the extra gang foreman instead. They contend "that Foreman Story was entitled to protect all available overtime work on his assigned territory and that he was deprived of the opportunity of working eight double-time hours in addition to being deprived of the time and one-half rate of pay for the hours of his regular assignment." The Carrier, on the other hand, explains its action as follows: "Since there was no way of knowing when the storm would abate, it was the judgment of the supervisor that this gang should be relieved for rest so as to be available for further service at regular starting time next day."

In Award 4948, involving the same basic issue and facts quite similar to those involved in the present case, this Division stated:

"The record in this case shows that Carrier relieved Section Crew 252 when several of the gang had completed 16 hours' work. The Carrier says it was done to afford a six-hour rest period before Section Crew 252 was required to report for its regular assignment the following day. In order to do this, Carrier released Section Crew 253 at 6:00 P.M. to afford rest before it relieved Section Crew 252 at midnight. * * *

"The claim here is for the double time claimed to have been lost to Section Crew 252 when Section Crew 253 relieved them. We must again reiterate that the purpose of the overtime rule is not to create work for which punitive compensation can be demanded. * * *

"Both the Carrier and the Organization have recognized that an employee's efficiency wanes after eight hours of continuous work. They have recognized also that after 16 hours' continuous work a further loss of efficiency may reasonably be expected. The punitive rates imposed by the Agreement for working employees in excess of eight and 16 hour periods were entered into as a means of coercing the Carrier into maintaining the efficiency of its employees by not working them for unreasonable periods of time. * * * Where the restraint is effective in accomplishing the purpose of the Agreement, the Agreement has been complied with and neither party may correctly assert such compliance to be a breach."

The reasoning of Award 4948 is here considered very sound and the Award must be deemed controlling unless adequate distinction exists for refusing its application here. Certainly no adequate distinction exists as to the facts.

But the Employees contend that Award 4948 is inapplicable here for the reason that in addition to rules essentially the same in both cases, in particular the "overtime" and "seniority" rules, the agreement applicable to the present case also contains Rules 29 and 31. It is most difficult, however, to see how these rules render Award 4948 inapplicable.

First as to Rule 29. This Rule is not concerned with emergency situations such as that involved here.

In so far as Rule 31 is concerned, on the other hand, this Rule treats specifically of service by outsiders in emergency situations, permitting the use of persons who are not employees of the Carrier during emergencies caused by nature. It would be peculiar indeed to hold that outsiders can be used in such emergencies but that extra gangs cannot. As a matter of fact, Rule 31 and Award 4948 both have about the same effect, and differ only in that Rule 31 permits use of outsiders while Award 4948, pursuant to other rules of the agreement, permits use of other employees. Thus, all in all it is quite clear that Rule 31 permits use of outsiders to relieve exhausted employees during an emergency, and that Award 4948 permits use of other employees to relieve exhausted employees during an emergency, even without a specific "emergency" rule—Award 4948 thus clearly supports the action of the Carrier in the present case, and Rule 31 simply supplements but by no means renders Award 4948 inapplicable.

Finally, it appears to be the view of the Employees that in emergencies regularly assigned employees can be augmented by others only to the extent that other persons can physically aid the regularly assigned employees during the time they are working. A similar view was answered in Award 4948 as follows:

"This is a misconception. Augmentation of maintenance of way forces during an emergency applies as well to relieving exhausted employees as it does to giving direct assistance. To say that an emergency whose duration is wholly unpredictable, must be met in every case by such an absolute rule of thumb, would not recognize practicable problems connected with keeping traffic continuously moving under the conditions herein described." (Emphasis added.)

In view of the above considerations it must be concluded that the Carrier did not violate the agreement.

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 did not violate the agreement.

AWARD

Claim (1) and Claim (2) both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1953.