

Award No. 6497
Docket No. MW-6409

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the effective agreement when they failed to compensate Section Foreman C. E. Fick in conformity with the provisions of the Call Rule, for services rendered prior to and not continuous with his assigned work period on October 17, 19, 22, 30, 1951, and subsequent dates thereto;

(2) That Section Foreman C. E. Fick be reimbursed for the differences between the amount received as payment for this service and what he would have received had he been allowed a minimum of two hours and forty minutes at the time and one-half rate on October 17, 19, 22, 30, 1951 and subsequent dates thereto as referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. E. Fick is a regularly assigned Section Foreman, assigned to Section A-6, with headquarters at Mason City, Iowa. He is regularly assigned to work Mondays through Fridays, with assigned hours from 8:00 A. M. to 5:00 P. M., which includes a one hour meal period.

On October 17, 1951 and on subsequent dates thereto, Foreman Fick was called from his home at hours varying from 6:00 A. M. to 7:00 A. M. and instructed to replenish the supply of fuel oil and sand on a switch engine (locomotive) which had been operated at Mason City, Iowa.

The work of supplying locomotives with fuel oil and sand is not contemplated within the scope of the agreement between the parties hereto.

Foreman Fick complied with the instructions issued to him by the Carrier's officials through various station employees who were on duty at Mason City, and in each instance, he immediately proceeded to the locomotive fueling station and replenished the locomotive's fuel and sand supply.

The actual time consumed in performing the work for which he was called varied from a half-hour to three-fourths of an hour. In accordance with Carrier's standing instructions, Foreman Fick submitted overtime slips (Carrier Form 34) for each day on which he performed such overtime service. Under the column captioned "Overtime Hours", Foreman Fick entered "2 2/3", which indicated the minimum number of hours compensable for work per-

premised on the allegation that claimant "is called out without advance notice usually around 6:30 A. M. to 6:45 A. M. for the above referred to work and it takes approximately fifteen (15) to thirty (30) minutes time to complete the work and he is then released until his regular starting time at 8:00 A. M.

The facts are, however, that Claimant is not called out without advance notice, but, as shown in Carriers' Statement of Facts, "Section Foreman maintains contact with switch engine crews and when the occasion demands he reports for duty in advance of his regular starting time of 8:00 A. M."

It may be further noted from the fifth paragraph of General Chairman's letter November 23, 1951 (quoted in Carrier's Statement of Facts), that claim for a minimum of two hours forty minutes at the time and one-half rate is also premised on the allegation that Claimant "is released in each and every instant at 7:00 A. M. or one hour before his regular starting time."

The true circumstances are as related in Carrier's Statement of Facts, viz:

"It is never necessary that he report for duty in advance of 7:00 A. M., although on occasions he has voluntarily reported a few minutes in advance of that time; however, no sanding can be performed until after switch engine crew reports for duty and moves engine from the fueling facilities (where engines are parked and idled over-night) to the sanding facilities. After sanding of the 7:00 A. M. engine has been completed and pursuant to standing instructions, Section Foreman returns to the fueling facilities and refuels the 8:00 A. M. switch engine. In the meantime, engine crew of the 8:00 A. M. switch engine has generally reported for duty and the latter engine is then moved from the fueling facilities to the sanding facilities, where same is also sanded by the Section Foreman.

At no time has Section Foreman been released from such service prior to his regular starting time of 8:00 A. M....."

This situation at Mason City has existed since 1949 and it was not until October 17, 1951, or for a period of nearly three years, before the Employees alleged there was any basis for a minimum of two hours and forty minutes at time and one-half rate in lieu of compensation on actual minute basis at time and one-half rate, as provided by Rule 26 (b), notwithstanding that there has been no change in the practice.

It is the Carrier's contention that Rule 26 (b) is controlling and that Rule 27 (a) is not applicable to the circumstances involved in this dispute. Claimant has been properly compensated strictly in accordance with the terms of Rules 26 (b) and 36, and there is no valid basis for the additional compensation claimed.

(Exhibits not reproduced)

OPINION OF BOARD: The question here is whether the claimant is entitled to compensation for a call under Rule 27(a) or to overtime compensation under Rule 26(b). The call rule applies to "employees notified or called to perform work not continuous with the regular work period." The overtime rule applies to "time worked preceding or following and continuous with a regularly assigned eight hour work period."

The Carrier states that the claimant had standing instructions to refuel and replenish sand on switch engines as required which made it necessary during the sugar beet harvesting season for him to report for work at 7 A. M. on some days, instead of his regular 8 A. M. starting time and that

on those occasions he was never released from duty prior to his regular starting time.

The Organization states that on all of such days the refueling and sanding service was completed in about one-half hour leaving some dead time between the service required and the regular starting time of the claimant so the call rule is applicable to such service.

The completion of a task which an employe has been instructed to perform does not automatically release him from duty. See Award No. 4604. There is no affirmative showing that claimant was released from duty by the Carrier prior to his regular starting time. Also, it is admitted that the claimant had standing instructions to refuel and sand the switch engines as required. Thus on this record it cannot be said that he was notified or called to perform work not continuous with his regular work period, so the claim cannot 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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.