Award No. 7661
Docket No. MW-7456

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) That the carrier violated the effective agreement when on January 10, 1950, and on January 12, 1950, it required Bridge and Building employes W. A. Biglow, F. J. Dais, G. Hemenway, G. E. Davis, and F. H. Stratton, to suspend work during their regular assigned working hours.

(2) That the above-named employes be paid at their respective time and one-half rate of pay for three (3) hours each on January 10, 1950, and for seven (7) hours each on January 12, 1950, because of the carrier's improper action.

EMPLOYES' STATEMENT OF FACTS: The regular work period of Bridge and Building Gang No. 1, Shasta Division, is from 7:30 A. M. to 12:00 Noon and 1:00 P. M. to 4:30 P. M. Monday through Friday.

On Monday, January 9, 1950, the members of Bridge and Building Gang No. 1, began work at Dunsmuir at 7:30 A. M. and because of severe storm conditions, were used to remove snow from switches and tracks. With the exception of a period of release for meal period from 12:00 Noon to 1:00 P. M., on January 9, they worked continuously from 7:30 A. M. January 9, until 1:30 P. M. January 10, 1950, at which time they were suspended from working until 4:30 P. M. by direction of the Bridge and Building Supervisor.

Bridge and Building Gang No. 1 resumed work at Dunsmuir at 7:30 A. M. Wednesday, January 11, 1950, and with the exception of release for meal period from 12:00 Noon to 1:00 P. M. January 11, were continuously engaged in removing snow from switches and tracks until 8:30 A. M. January 12, 1950, when their regular hours were again suspended from 8:30 A. M. until 12:00 Noon and from 1:00 P. M. until 4:30 P. M.

Claim was filed in behalf of W. A. Biglow, F. J. Dais, G. Hemenway, G. E. Davis, and F. H. Stratton, for compensation at their respective time and one-half rate of pay for three (3) hours each on January 10, computed from 1:30 P. M. to 4:30 P. M., and seven (7) hours each on January 12, 1950, computed from 8:30 A. M. to 12:00 Noon and 1:00 P. M. to 4:30 P. M.

Claim was declined.

the requirements of the service, and will not be changed without first giving employes affected thirty-six (36) hours' notice."

The rule obviously refers to assigned starting time, and has no bearing on the merits of this claim. There was no change whatever made in the assigned starting time of claimants on the dates involved. They actually commenced service at their assigned starting time (7:30 A. M.) on January 9 and January 11. The extract from Rule 26, which is quoted above, particularly the emphasized portion, clearly indicates that it is within the contemplation of the current agreement that employes may be held in service for an entire 24-hour period and continuing on for a portion of a second 24-hour period such as was done in the instant case.

Carrier respectfully asks that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the Employes and Carrier and are made a part of the particular question in dispute.

OPINION OF BOARD: Claim is made in behalf of named Claimants, each a member of a Bridge and Building gang. It is alleged that the Carrier violated the terms of the effective agreement, and improperly required said Claimants to suspend work during their regular assigned hours on January 10 and 12, 1950. Reparations are sought for 3 hours pay, (punitive rate) on the date first mentioned and 7 hours pay, (punitive rate) on the last date indicated. Each Claimant held assignment 7:30 A. M., to 12:00 noon and from 1:00 P. M., to 4:30 P. M., Monday through Friday.

The record indicates that on January 9, 1950, Claimants worked beyond their 4:30 P. M., quitting time, continuously until 1:30 P. M., on January 10, 1950 at which time, on the Respondents' order no further service was performed. On January 11, 1950, service was resumed at the normal starting of 7:30 A. M., and except for the intervening meal period of one hour, continued service until 8:30 A. M. on January 12, at which time they were relieved from service. It is the failure of the Respondent to permit the performance of work until 4:30 P. M., on January 10, a period of 3 hours, and on January 12, a period of 7 hours that forms the basis of the Organization's claim that Claimants were improperly suspended from service in violation of Article 5, Rule 23, Rule 25 and Rule 30, thus were entitled to compensation at the punitive rate.

The Organization asserts that Rule 23 in effect guarantees Claimant's 8 consecutive hours (meal period excluded) of work, subject to the exceptions contained in Rule 25. It is asserted that no mutual agreement existed permitting a reduction in hours; that it was not for the employes' convenience, since they did not request to be relieved, and finally that it was not because of inclement weather interruptions, since weather conditions produced the working schedule in question.

The Respondent takes the position that the work was of an emergency nature and that Claimants could properly be assigned work during periods outside regular assigned hours as was done here; but that no rule of the effective agreement requires Carrier to work an employe an excessive amount of overtime. It was further averred that less than 8 hours (within the normal daily schedule) were worked (1) for the convenience of the employes and (2) because of weather conditions. It was further pointed out since overtime was worked, there was no work suspension to avoid payment thereof.

There can be no doubt that the snow removal work constituted an emergency and that the Carrier could require the work to be done when it was possible to accomplish same. Snow removal is arduous work. Claimants here were in continuous service for a period in excess of 13 hours on one of the dates in question. Rule 23 is a basic day rule. Claimants worked in excess of eight hours on both dates. It is not questioned but that Claimants were paid at the punitive rate, on the actual minute basis for all service performed

during the second regular work period, within the meaning of Rule 26. This Rule (26) permits service during the second regular work period, but cannot be construed to preclude their release during such second regular period. The snow removal work was all done by the class and craft to which it could be properly assigned. No one else performed any part of this work. Claimants received considerable overtime. There was no suspension of work here for the purpose of absorbing overtime.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.