

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it refused to compensate Section Foreman R. G. McCarroll for services rendered during hours outside of and not continuous with his regularly assigned work period on June 24 and 25, 1953, at which times he was required to arrange for and provide relief for a crossing watchman who became ill or was otherwise unable to continue service during the hours of his assignment;

(2) Section Foreman R. G. McCarroll now be allowed payment for two calls in accordance with Rule 38 (a) of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. R. G. McCarroll was regularly assigned to the position of Section Foreman at Ottumwa, Iowa, with assigned hours from 7:30 A. M. to 4:30 P. M., with one hour out for lunch.

At 1:00 A. M. on June 24, 1953, and again at 6:00 P. M. on June 25, 1953, Foreman McCarroll was called and directed to arrange for and provide relief for a crossing watchman at Market Street who had become ill or was otherwise unable to continue service during the hours of his assigned shift on both occasions. In each instance, Foreman McCarroll called a member of his crew and directed him to report to and relieve this crossing watchman.

Foreman McCarroll submitted overtime slips for a call of two hours and forty minutes at time and one-half rate for these services performed on each of the aforementioned dates. The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Positions of Section Foreman are monthly rated positions, the monthly basic rates being based on 169 $\frac{1}{3}$ hours per month

over general rules and leave the latter to operate outside the former. See Third Division Awards 4496, 5942, 6003, 6137, 6278, 6374, 6382, 6567, 6651, and others. Rule 43(a) provides that the provisions of Rule 38 will become applicable only when section foremen are required to walk or patrol track on rest days or holidays, or when required to perform service which is **not** a part of their supervisory responsibilities. Rule 43(a) provides further that compensation for any service performed which **is** a part of the responsibilities or supervisory duties of a position, irrespective of when performed, is included in the monthly rate and no additional compensation is required.

The act of calling an employe under his jurisdiction and instructing him to report for duty at a given time and place, is one of the responsibilities or supervisory duties included in the monthly rate of a section foreman. Time consumed by a foreman in calling employes under his jurisdiction is provided for in Rule 43 (a) on the same basis as the time consumed by the foreman in handling his reports and other work incidental to his supervisory responsibilities. Such time has never been paid under the call rule, nor has any claim ever been made by Petitioner prior to the instant claim. Thus we have a duty, long recognized as constituting a responsibility of the section foreman, that is inherent in the position of foreman and which has existed since the first agreement between the parties more than thirty years ago. This duty and responsibility is expressly contemplated by Rule 43(a), which has appeared in all agreements since the first agreement was negotiated between the parties in 1922.

In conclusion, the Carrier asserts that:

1. The record clearly shows that the service made the basis of this dispute is a part of the responsibilities or supervisory duties of the claimant.
2. Rule 43(a) provides that compensation for work which is a part of the responsibilities or supervisory duties of a section foreman's position is included in the monthly rate covering such work, and no additional compensation can be allowed under the clear provisions of the rule.
3. Third Division awards cited by Carrier covering claims involving rules similar to Rule 43(a) clearly support Carrier's position.

In the light of the record, there can be no decision other than denial of the claim in its entirety.

* * * * *

The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim involves request for payment for a call on each of two dates, namely, June 24 and 25, 1953, account of claimant performing services outside his hours in arranging for relief of a crossing watchman.

Rules 38(a) and 43(a) are relied upon by the parties. These rules provide:

Rule 38(a). "Employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on actual minute basis."

Rule 43(a). "Employees whose responsibilities or supervisory duties require service in excess of the working hours or days assigned for the general force, will be compensated on a monthly rate to cover all services rendered, except that when such employees are required to perform work which is not a part of their responsibilities or supervisory duties, on rest days, holidays, or in excess of the established working hours, such work will be paid for on the basis provided in these rules, in addition to monthly rate. Section foremen required to walk or patrol tracks on rest days and holidays shall be paid therefor on the basis of provisions contained in Rule 38 (a). Note: See Appendix 'D' and Appendix 'H'."

The Organization took the position that the functions performed by the claimant were clearly outside the "responsibilities or supervisory duties" covered by Rule 43 (a) and applying to a monthly rated position.

The respondent counters with the assertion that claimant in providing for, or making arrangements for the relief of a crossing watchman by telephone, performed neither service or work not a part of claimant's "responsibilities or supervisory duties." Nor was he "required to walk or patrol tracks on rest days and holidays," within the meaning of Rule 43 (a).

We are unimpressed by the Carrier's contention that the work performed by claimant merely accounted to the receipt of information by telephone and the exercise of his responsibility as supervisor in calling a replacement on the dates in question. If the claimant had gone to the homes of the relief men and arranged for their services it would hardly be disputed that he had performed work. The fact that he was able to achieve his purpose by handling these duties by telephone does not alter the principle.

We are of the opinion that the area or scope of the duties contemplated as coming within the "responsibilities or supervisory duties" of monthly rated positions under rules similar to, if not identical with Rule 43 (a), has been properly determined by prior decisions of both this and prior Boards of Adjustment, particularly in Award 5159 of this Division wherein it was stated:

"* * * Supervisory duties as here used have been defined 'as making up payrolls, reports, correspondence, cleanliness of outfits, meeting supervisory officers after regular hours or on Sundays, studying blue prints, preparing plans or ordering material required in their work.' Docket M-714, Railway Board of Adjustment No. 3, bearing date of July 30, 1920. It is noteworthy that immediately following the portion of the award heretofore quoted, the Board said: 'All other work in excess of eight hours or on Sundays is overtime.' The decision clearly sustains the position of the Organization. We do not think that Rule 38 was intended to deprive the claimant of a 'call' under the situation here described. The rule before us was written into the Agreement after the Railroad Board of Adjustment had interpreted it. The carrying of the rule forward into the collective Agreement in the same form carries with it the interpretations previously placed upon it in the absence of a manifested intent to do otherwise. * * *"

For the reasons stated, this claim is valid.

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 Carrier violated the effective Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

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

DISSENT TO AWARD NO. 8131, DOCKET NO. MW-7330

The majority relies on Award 5159 to support its conclusion that the Agreement was violated, notwithstanding existence of distinguishing factual difference in that case from the present case. In Award 5159 the claimant was called to work and reported at the Section Headquarters. That was not the case here. Awards 5916 and 6107.

The majority adopted an excerpt from Docket M-714, Railway Board of Adjustment No. 3, as it was quoted in Award 5159, as being all-inclusive as to "responsibilities or supervisory duties" and admitting of nothing else. But the language of the Decision in said Docket M-714, which was not fully quoted in Award 5159, was that,—

"The exception as to overtime provided for in section (h), Article V of the national agreement of the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers, covers such supervisory duties as making up payrolls, reports, correspondence, cleanliness of outfits, meeting supervisory officers after regular hours or on Sundays, studying blueprints, preparing plans or ordering material required in their work.

"All other work in excess of eight hours or on Sundays is overtime." (Emphasis added.)

Use of the words "such supervisory duties as" clearly indicates it was not intended that the duties outlined be all-inclusive. The words "such * * * as" can only be construed as illustrative but not all-inclusive of the duties of like character which are excepted from overtime.

"All other work" means work other than the supervisory duties cited and supervisory duties of like character. Calling employes under his direction is a supervisory duty of claimant's which is of like character to the duties cited in Docket M-714.

For the reasons stated, the Award is in error and we dissent.

/s/ J. F. Mullen
/s/ J. E. Kemp
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ R. M. Butler