

Award 13993

Docket No. MW-14350

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on July 3, 1962, it required the members of the section gangs at Beaumont, Ovett and Lucedale, Mississippi to commence work prior to their regularly assigned starting time and to suspend work during part of their regularly assigned working hours and then compensated said employes at straight-time rates for work performed in advance of and continuous with their regularly assigned work period and refused to allow them any compensation for the time they were required to suspend work during regularly assigned working hours.

(Carrier's files E-41-94 and E-41-95)

(2) (a) Each employe who was working in the Beaumont and Ovett section gangs on July 3, 1962 be allowed the difference between what he should have been paid at his respective time and one-half rate and what he was paid at his respective straight-time rate for the two and one-half (2½) hours that each was required to work in advance of and continuous with his regularly assigned work period.

(b) Each employe who was working in the Beaumont and Ovett section gangs on July 3, 1962 be allowed two and one-half (2½) hours' pay at his respective straight-time rate account of being required to suspend work for two and one-half (2½) hours of their regular assignment on July 3, 1962.

(3) (a) Each employe who was working on the Lucedale section on July 3, 1962, be allowed the difference between what he should have been paid at his respective time and one-half rate and what he was paid at his respective straight-time rate for the two (2) hours that each was required to work in advance of and continuous with his regularly assigned work period.

(b) Each employee who was working in the Lucedale section on July 3, 1962, be allowed two (2) hours' pay at his respective straight-time rate account of being required to suspend work for two (2) hours of their regular assignment on July 3, 1962.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions in section gangs headquartered at Beaumont, Ovett, and Lucedale, Mississippi. Each gang was regularly assigned to work from 7:30 A. M. to 4:30 P. M., including a one-hour meal period.

On Tuesday, July 3, 1962, the Carrier called the Beaumont and Ovett section gangs at 5:00 A. M. and the Lucedale gang at 5:30 A. M. and used them to unload two carloads of riprap and brickbats. The work consisted primarily of unloading these materials in various amounts at different locations from freight cars which were being moved between such locations in a regular freight train.

At the completion of the unloading work, these gangs were required to cut weeds along the right-of-way until they had performed eight hours of work. Each gang was then required to suspend work for the balance of the day's regular assignment.

Consequently, the employees of the Beaumont and Ovett section gangs were deprived of the right to work the last two and one-half hours of their regular assignment and were required to work two and one-half hours during overtime hours at their respective straight time rates of pay. The employees of the Lucedale section gang were deprived of the right to work the last two hours of their regular assignment and were required to work two hours during overtime hours at their respective straight time rates of pay.

The Agreement in effect between the two parties to this dispute dated April 28, 1950, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Carrier's position in this dispute was clearly set forth in letters of claim declination reading, in part, as follows:

"This claim was discussed at our conference held in Mobile on August 28, and you were advised that it is the position of the company that these gangs were performing ordinary and regular duties as regularly assigned to such employees; that the necessary 24-hour advance notice was given, in accordance with the agreement, that the starting time of the assignment hours would be changed from 7:30 A. M. to 5:00 A. M. due to the fact that it was necessary to unload two cars of rip rap from the only assigned train on this territory which is a regular function performed by section forces in line with regular duties and which has been customarily handled in the same manner over a considerable number of years and handled under similar circumstances."

"This claim was discussed at our conference held in Mobile on August 28, and you were advised that it is the position of the company that these gangs were performing ordinary and regular duties as regularly assigned to such employees; that the necessary 24-hour advance notice was given, in accordance with the agreement, that

passed upon the seniority or other contractual rights of the employees so identified." (Emphasis ours.)

CONCLUSION

The change in the starting time of the work period was necessitated by practical railroad conditions. Rule 5 was negotiated to take care of such practical situations. There is no requirement that the claimants be additionally compensated.

Carrier urges that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is similar to that in Docket MW-14248; the parties and the Agreement are the same. Claimants, who were members of the Beaumont, Overt and Lucedale, Mississippi section gangs, held positions regularly assigned to work from 7:30 A.M. to 4:30 P.M., including one hour for lunch.

For Tuesday, July 3, 1962, the Carrier directed the Beaumont and Overt section gangs to start work at 5:00 A.M. and the Lucedale section gang was directed to start work at 5:30 A.M. All of the Claimants worked and were paid for eight hours at straight time from their early starting time. Their starting time for the next scheduled work day reverted back to 7:30 A.M.

The interpretation of Rules 5 and 8(d), as well as other applicable Rules of the Agreement, are fully discussed in Award 13992, relating to Docket MW-14248. That interpretation applies to the issue under consideration. On the basis of that interpretation, Claimants are entitled to additional pay at one-half times their respective basic hourly rates for all hours worked prior to 7:30 A.M. on Tuesday, July 3, 1962 and to additional straight time pay for hours starting from their directed quitting time to 4:30 P.M. on that day.

The exact number of hours worked and the request for additional compensation for the members of each of the gangs are fully and correctly set out in the claims.

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 violated the Agreement.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1965.