Award No. 14070
Docket No. MW-14548

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ATLANTIC COAST LINE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it called and used Bridge Tender F. M. Owens to perform overtime service on December 27, 1962, which was not continuous with his regular work period and, instead of compensating him therefor in compliance with the provisions of Section 15 of Rule 8 (minimum of 2 hours and 40 minutes at time and one-half rate), it allowed him only thirty minutes' pay at time and one-half rate.

(2) The Carrier be required to now allow and pay Bridge Tender F. M. Owens an additional two (2) hours and ten (10) minutes' pay at his time and one-half rate for the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant F. M. Owens was regularly assigned to the position of Bridge Tender at Lake Monroe. He was assigned a regular work period extending from 9:00 A. M. to 10:00 A. M. and from 12:30 P. M. through 7:30 P. M. His assigned rest and meal period extended from 10:00 A. M. to 12:30 P. M.

The normal position of the subject drawbridge is **down or closed.** However, since the navigational requirements at this location make it essential that the flow of river traffic **not** be interrupted for any extended period of time, the Carrier's Bridge Tenders have specific instructions to leave said drawbridge in a **raised or open** position whenever they go off duty. In compliance with said instructions, the claimant left the drawbridge in a raised position when he began his rest-meal period at 10:00 A. M. on December 27, 1962.

At 12:00 Noon on this date, the Carrier's Train Dispatcher called and used the claimant to close the subject drawbridge to permit the passage of a train identified as "Extra 365 North." After said train passed, the claimant again placed the bridge in the raised position and, at 12:10 P. M., he re-

The payment of one hour, to which Carrier agreed in 1958, was a concession which went beyond the provisions of the agreement, but was agreed to by Carrier to insure that bridgetenders were adequately compensated when their lunch period was interrupted. However, the position which is being urged by the organization is one which was never intended by the parties to the agreement and is one which could lead to some utterly insane results. Under the interpretation being placed upon Section 15 by the organization, a bridgetender with a four-hour lunch period, as authorized by Section 12 of Rule 8, could be called out an unlimited number of times during that four-hour period, for only 10 minutes work on each occasion, and for each such call he would have to be paid two hours and 40 minutes at overtime rate. Obviously, such an absurd result was never intended by the framers of the current agreement, and the intended application of Section 15 was, as explained herein, for those occasions when bridgetenders are called out after having completed their eight-hour assignment. Under the provisions of Section 14, Carrier properly paid claimant for his 10 minutes on duty, by allowing him 30 minutes, at overtime, continuous with his regular hours, and he is, under no circumstance, entitled to two hours and 40 minutes overtime for this 10 minutes of work during his lunch period.

The respondent Carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

OPINION OF BOARD: The facts which precipitated the instant dispute are not in contention. They may be briefly summarized as follows:

The Claimant is a Bridge Tender at Lake Monroe, Florida, with regular hours of service from 9:00 A. M. to 10:00 A. M. and from 12:30 P. M. through 7:30 P. M., release period from 10:00 A. M. through 12:30 P. M. — a total of eight hours work which complied with Section 12 of Rule 8.

On December 27, 1962, the Claimant commenced his rest-meal period at 10:00 A. M., leaving the drawbridge in a raised or open position. Such action was pursuant to specific instructions from the Carrier that whenever a Bridge Tender went off duty, in order to eliminate interfering with the flow of river traffic, the drawbridge was to be left in a raised or open position.

At 12:00 Noon on said date, the Claimant was called by the Train Dispatcher to close the drawbridge in order to permit the passage of Extra 365 North. This was accomplished and at 12:10 P. M., again placed the bridge in an open position and resumed his off-duty status until 12:30 P. M. — his regular work period.

The Claimant, thereafter, submitted Form 453, requesting payment for a call of two hours and forty minutes at the time and one-half rate for said service. The Carrier declined to pay such request, but did compensate the Claimant for thirty minutes at the time and one-half rate. Subsequently, the Carrier conceded that he should have been paid for one hour at the time and one-half rate, and has tendered the difference.

In order to resolve the disagreement between the parties, we are required to determine which section of the effective agreement is most pertinent thereto.

The Organization urges that Section 15 of Rule 8 is applicable, whereas, the Carrier relies upon Section 14 of Rule 8.

The subject matter of this dispute has been in contention for many years. Over time, various conferences were held on the property in an attempt to resolve the problem. In fact, at one time, the Carrier wrote the Organization to the effect that, in the event a bridge tender would be called to close the bridge during the lunch hour, he would be paid for a call, i.e., two hours and forty minutes at time and one-half rate. Subsequently, this position was retracted and the Carrier offered to pay for one hour at the overtime rate for such work. The Organization rejected the latter offer and reiterated its position that such work was compensable as a call, under Section 15 of Rule 8.

The two sections in issue which are pertinent herein, read as follows:

RULE 8

Section 14

"Section 14. (Revised, effective September 1, 1949.) Time worked following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on the actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employe's regular shift.

Time worked continuous with and in advance of the regular eight (8) hour work period; (a) if six (6) hours or less, will be paid at time and one-half rate until the beginning of the regular work period and then at the straight time rate during the regular eight (8) hours work period; (b) if in excess of six (6) hours the time and one-half rate will apply until released for eight (8) hours or more. Such release, upon completion of six (6) hours or more actual work, will not constitute a violation of Section 16 of this Rule."

RULE 8

Section 15

"Section 15. (Revised, effective December 16, 1944.) 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 rate, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis."

It appears to us that the Organization's interpretation is sound. A careful analysis of Section 14 discloses that the apparent intent of the parties was to provide a method for compensating employes who were required to perform work **following and continuous with**, or **continuous with and in advance of** their regular eight hour period, on the basis of actual time elapsed, at the overtime rate. Contrariwise, under Section 15, compensation would be paid for a call, where the work performed was **not continuous** — and such payment would be for two hours and forty minutes at overtime rate.

We believe it to be extremely significant and crucial to a proper interpretation of this Rule, that Section 14 employs the words **following and con-**

tinuous, or continuous with and in advance of, as differentiated from Section 15, wherein the phrase **not continuous** is employed. It cannot be gainsaid, regardless of what future instructions the Carrier might issue relative to the two and one-half hours period, such is an authorized lunch-rest period. Presumably, the employe is at liberty to pursue his own activities, subject to being called for such an eventuality as occurred in the instant situation. Until different arrangements are negotiated by the parties, or other instructions issued, the Claimant is entitled to be compensated for a call under Section 15 of Rule 8.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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