

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20460
Docket Number MW-20537

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Akron, Canton and Youngstown Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow certain employees (named in Parts (2) and (3) below) to work their regular assignment between 7:30 A.M. and 4:00 P.M. on July 20, 1972 and, as a consequence thereof

(2) Trackmen D. Williams, M. E. Spencer, L. J. Keysar, E. Szalabawka, D. W. Miller, E. Picklesimer, E. Damron and E. Ratliff each be allowed four (4) hours of pay at their straight-time rates

and

(3) Extra Gang Employees O. S. Langford, J. L. Farnsworth, J. R. Knipp and B&B Employees Ambrose Williams, Frederick Newman and Mark Steingass each be allowed three and one-half (3-1/2) hours of pay at their respective straight-time rates.

OPINION OF BOARD: After the derailment of 17 cars of a westbound through freight on July 19, 1972 Carrier dispatched track gangs and a B&B gang to the scene. They worked continuously from 7:30 a.m. on July 19 to 6:00 a.m. on July 20, twenty two hours.

There were relieved and instructed to report at 11:30 a.m. on July 20, 1972. Their work was again stopped at 7:30 p.m. For this eight hour period (30 minutes out for lunch) they were paid four hours pro rata and four hours at the punitive rate, ten hours.

The usual starting time is 7:30 a.m. Rule 33 reads:

"STARTING TIME. The starting time of the work period for regularly assigned service will be designated by the Supervisory Officer and will not be changed without first giving employees affected thirty-six (36) hours' notice."

Carrier believes that Rule 33 does not apply here because, in its view, claimants were not in "regularly assigned service." While it is true that the Board has given Carrier relief from the strict application of certain rules in cases involving derailment, the principle does not stretch to cover what occurred here. While the derailment certainly caused an emergency, the claimants were performing their regularly assigned service within the meaning of Rule 33. The term "regularly assigned service" is used in that Rule to refer to service which has consistency and uniformity as to on-duty time, work days, rest days and possibly reporting point. Such "regularly

assigned service" is not altered by an emergency which causes the incumbents to work long hours. Carrier was required by the Rule to give thirty-six hours notice of a change in starting time.

Claimants have discussed other Rules which singly and in combination may have been violated by Carrier's decision on work and relief hours. It is unnecessary to treat with them because the clear violation of Rule 33 means the claim must be sustained. The long hours which were necessary must have been a physical burden to claimants. They were also a monetary burden to Carrier by way of punitive time. The Rules call for the application of the punitive rate and the Board's function is to apply them as written. If they are too stringent, relief must be sought in the avenue provided by the RIA.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.

CARRIER MEMBERS' DISSENT TO AWARD NO. 20460 -
DOCKET NO. MW-20537 - (REFEREE EDGEITT)

The record before us is clear and a derailment of 17 cars occurred. An emergency existed. Carrier dispatched the track gangs and a B&B gang to the scene. Under no stretch of the imagination could this be considered "regularly assigned service".

Award No. 20460 is in error and we dissent.

H F M Braidwood
H. F. M. Braidwood

P. C. Carter
P. C. Carter

W. B. Jones
W. B. Jones

G. L. Naylor
G. L. Naylor

G. M. Youhn
G. M. Youhn