

(R-24-519)

AWARD NO. 8

CASE NO. 7

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES : The Brotherhood of Maintenance of Way Employees
TO :
DISPUTE : St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement when it established the position of Highway Crossing Watchman at Tyler, Texas, with assigned hours from 7:00 a.m. to 11:00 a.m. and 3:00 p.m. to 7:00 p.m.

(2) Highway Crossing Watchman N. G. Morgan now be allowed four hours' pay at the time and one-half rate for each workday of his work week for services as rendered between the hours of 3:00 p.m. and 7:00 p.m. beginning on December 23, 1957, and to continue until the violation referred to in Part (1) of this claim is corrected.

(3) Highway Crossing Watchman G. H. Carroll now be allowed four hours' pay at the time and one-half rate for each Saturday and Sunday for services as rendered between the hours of 3:00 p.m. and 7:00 p.m. beginning on December 21 and 22, 1957, and to continue until the violation referred to in Part (1) of this claim is corrected."

FINDINGS:

The employees state that prior to December 21, 1957, the carrier employed two crossing tenders working two shifts at North Spring Street, Tyler, Texas. The hours of service for the second trick was 3:00 to 11:00 p.m. seven days per week. Effective December 21, 1957, the carrier revised its crossing protection at North Spring Street and set up new hours of service as 7:00 a.m. to 11:00 a.m. and 3:00 p.m. to 7:00 p.m., seven days per week. The carrier created a split shift. After this change, crossing watchman, M. G. Morgan, the claimant, was assigned the new position, Monday through Friday, five days per week, and crossing watchman, G. H. Carroll, the claimant, was assigned the two day position, Saturday and Sunday. This new assignment required that the crossing tender commence his day at 7:00 a.m. and work till 11:00 a.m., then suspend work for four hours and return to his job from 3:00 p.m. to 7:00 p.m.

The employees state that the carrier violated Rule 7-10, Absorbing Overtime.

The carrier states that prior to December 16, 1944, there was contained in the agreement between the carrier and this organization, Rule 7-10, Intermittent Service, which read as follows:

"7-10. Intermittent Service--Positions not requiring continuous manual labor, such as track, bridge and highway crossing watchmen, flagmen at railway non-interlocked crossings, lamp men, and pumpers, and the work of which is of a light and intermittent character will be paid a monthly rate which will compensate for all services rendered for eight (8) hours' work within a spread of twelve (12) hours for the calendar days per month, with overtime at rate of time and one-half thereafter on the actual minute basis."

That effective December 16, 1944, Rule 7-10, Intermittent Service, read as follows:

"7-10. Intermittent Service--Positions not requiring continuous manual labor; such as, track, bridge and highway crossing watchmen, flagmen at railway non-interlocked crossings, lamp men, and pumpers may be paid on a monthly or hourly rate basis. If assigned hours are increased or decreased, monthly rates shall be adjusted in accordance with change in assigned hours. When additional positions are established the rate shall be in conformity with that of existing positions of similar work and responsibility in the same seniority district. The hours of employees covered by this rule shall not be reduced below eight per day for six days per week."

The changes in Rule 7-10 were brought about by a Memorandum of Agreement dated October 21, 1944.

The Agreement under which this claim is filed became effective September 1, 1947, and Rule 7-9, Intermittent Service reads as follows:

"7-9. Intermittent Service--Positions not requiring continuous manual labor; such as, track, bridge and highway crossing watchmen, flagmen at railway non-interlocked crossings, lamp men, and pumpers may be paid on a monthly or hourly rate basis. If assigned hours are increased or decreased, monthly rates shall be adjusted in accordance with change in assigned hours. When additional positions are established the rate shall be in conformity with that of existing positions of a similar work and responsibility in the seniority district. The hours of employees covered by this rule shall not be reduced below eight (8) per day for six (6) days per week."

The carrier further states that Rule 7-9 of the effective Agreement was retained as an Intermittent Service rule governing "positions not requiring continuous manual labor." When revision of this rule was negotiated, effective December 16, 1944, it was the intention of the parties to continue the assignment of employees to perform a minimum days service within a spread of hours exceeding eight, exclusive of meal period. That this was the intention of the Rule is further borne out by the fact that Intermittent crossing watching assignments were maintained at Pine Bluff, Arkansas, until April 1951 without any claim that such assignments were in

violation of the Agreement. The deletion of the phrase "eight (8) hours work within a spread of twelve (12) hours" had no effect of abrogating the carrier's right to require assignment of eight hours work within a spread of more than eight hours. On the contrary, this change merely eliminated the restriction that limited the spread of hours in which eight hours work could be required.

The evidence submitted to the Board shows that prior to December 16, 1944, the Intermittent Service rule then known as Rule 7-10, gave the carrier the right to work crossing watchmen eight hours within a spread of twelve hours. However, effective December 16, 1944, that part of the rule concerning the working of eight hours within the spread of twelve hours was eliminated and it was also eliminated in the Agreement that is before us, which became effective September 1, 1947, and is now known as Rule 7-9.

The carrier's contention that under Rule 7-9, the reason that the eight hours within a spread of twelve hours was eliminated was to give to the carrier a larger spread of hours to work an employee eight hours, is not well taken. The starting time Rule, which is Rule 7-13(b), that refers to single shifts, states that employees working single shifts, regularly assigned exclusively to day service, will start their work period between 6:00 a.m. and 8:00 a.m. There is no exception contained in this rule relative to employees, such as watchmen, that are named under the Intermittent rule. Rule 7-10, Absorbing Overtime, states that employees will not be required to suspend work after starting a daily assigned work period for the purpose of absorbing overtime. There is no exception in this rule that crossing watchmen, whom the carrier contends work under the Intermittent Service rule, should be excluded from the operation of this rule.

The Board finds that when the carrier and the organization eliminated the words "eight (8) hours within a spread of twelve (12) hours", that employees named under the Intermittent Service rule, that were required to work eight hours per day, would come under the other rules of the effective Agreement. Therefore, the carrier violated Rule 7-9 when it required the claimant to work 7:00 a.m. to 11:00 a.m., and 3:00 p.m. to 7:00 p.m.

The evidence brought out at the hearing showed that claimant G. H. Carroll is not and has not been working as a relief watchman for some period of time. Due to extenuating circumstances that were brought out in the evidence in this case, claims 2 and 3, which are claims for compensation will be denied.

AWARD:

Claim No. 1 sustained. Claim No. 2 and 3, denied.

(s) Thomas C. Begley

Thomas C. Begley, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Employee Member

(s) M. L. Erwin

M. L. Erwin, Carrier Member

Dated: May 18, 1960.