

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Electrical Workers)  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current working agreement the Burlington Northern Inc., arbitrarily denied overtime compensation to System Wireman Thomas J. Dillon, headquartered in St. Louis, Missouri in the amount of 2.7 hours for date of December 11, 1977.
2. That accordingly, the Burlington Northern Inc., be ordered to compensate Claimant Thomas J. Dillon, System Wireman for the 2.7 hours compensation at time and one-half rate for date of December 11, 1977.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

There is no dispute between the parties with respect to the essential facts in this case.

On the morning of December 11, 1977, the Claimant, Mr. Thomas J. Dillon, received a telephone call from a Carrier official concerning some technical difficulties being experienced on the property. Based on the telephone conversation the problem was corrected. The day happened to be the Claimant's assigned rest day. He filed a claim for 2.7 hours of compensation at overtime rates, which is equivalent to four hours at straight time. In support of the Claimant's position, the organization relies upon its interpretation of Rule 4 of the agreement which reads in pertinent part as follows:

"(c) Employees called or required to report for service and reporting but not used, will be paid a minimum of four (4) hours at straight time rates."

In the organization's view, since the Claimant was "called" he is entitled to such pay. It points out that the Claimant did perform some service, but the record is incomplete with respect to the importance of that service or the time involved. Based on the record, the gravamen of the matter involves the interpretation of the above-cited Rule.

Contra the organization's view is that of the Carrier that the Rule must be read in its entirety. Employees "called and reporting but not used" will be paid the minimum of four hours."

If this Board were to follow the interpretation placed upon the Rule by the organization, the parties would be confronted with a rule which would read: "Employees called but not used will be paid a minimum of four (4) hours at straight time rates." Since there is no language which circumscribes the nature of the call, presumably almost any call would qualify. It is difficult for this Board to believe that sophisticated negotiations meant to adopt such a rule. Further, the mischief such an interpretation might do to the relationship of the parties would be substantial.

This Board cannot overlook the use of the important conjunction "and" in the wording of the Rule. By common usage and definition, the word means "also," "in addition to," "moreover," etc. It simply cannot be ignored. Thus, stated differently, the Rule provides that the employee must be called. In addition to that, he must report to work and not be used to qualify for compensation. The words following the conjunctive "and" qualify the words which precede it. Thus, the Rule must be read in its entirety to obtain the proper interpretation.

There is much in the record regarding rules which substantiates the claim for overtime pay but since no payment is due, this Board need not deal with that subject.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.