

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11140
Docket No. 10885
2-MP-EW-'87

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 3 (a) and 4 (a) of the June 1, 1960 controlling agreement when they denied Electrician W. C. Maier his contractual rights under the agreement to receive proper compensation for overtime worked October 8, 1983 at Dupo, Illinois.
2. That accordingly, Carrier be ordered to compensate Electrician W. C. Maier one-half hour at the straight time rate for October 8, 1983.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On October 8, 1983, Claimant continued to work for ten (10) minutes beyond his regularly assigned hours. Claimant submitted a time card for his eight hours of straight time and for one (1) hour at the time and one-half rate of pay. Claimant was instructed by the General Foreman that based upon a letter of July 1, 1983, his overtime for the first hour was to be changed to the straight time rate of pay. The Claim at bar is a contract interpretation of Rule 3(a) and 4(a) which state:

"OVERTIME:

RULE 3. (a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

"OVERTIME AND CALLS

RULE 4. (a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour."

The Organization views as incorrect the Carrier's interpretation of Rule 4 (a) in the above cited letter and considers its application to the Claimant as a violation of the Agreement. The Organization denies the Carrier's interpretation which stated in part that:

"the phrase 'with a minimum of one (1) hour' does not state whether the hours be paid at the straight time or the time and one-half rate. In the absence of any requirement that the one hour be paid at other than the negotiated rate of pay, that is the straight time rate, overtime of 40 minutes or less is to be paid a minimum of one hour at the straight time.

For overtime in excess of 40 minutes, employees are to be paid time and one-half on the actual minute basis."

The Organization maintains that the above is an incorrect interpretation and its application has not been historically applied on property. It argues that the intent of Rule 4(a), which does not mention a straight time rate is to assure that employees working any overtime would be guaranteed a minimum of one hour at the time and one-half rate for any time worked less than one hour. It further argues that if the Carrier's interpretation is accurate the language of the Rule would have stated at the straight time rate of pay.

The Carrier, while not denying that other applications have occurred on the property, and by letter of July 1, 1983, conceding errors due to "inconsistency in the method of payment," nevertheless notes that "we have had

claims in the past and to my knowledge claims such as this, have never been paid." The Carrier maintains that Claimant was paid one hour's pay for ten (10) minutes work, or six times his straight time rate for the overtime as required by the Rule. Such payment was well beyond the time and one-half rate of pay as required by the Rule for any work up to 40 minutes. It maintains that the Rule obligates Carrier to pay one hour at the straight time rate as a minimum for any time worked continuously in excess of the regularly assigned hours.

This Division of the Board has held under similar language that there is no violation of the Agreement where employees worked less than forty minutes overtime and were compensated at the straight time rate of pay. In Awards 1130, 1381 and 7127 this Board has maintained an interpretation and Findings consistent with the Carrier's position in the case at bar. This Board denies the Claim based upon the record and consistent with the above cited Awards of the National Railroad Adjustment Board. It finds that Carrier made a proper interpretation and application of the Rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1987.