NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12807
Docket No. 12678
94-2-93-2-58

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of
(Electrical Workers
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(Chicago & North Western Transportation
(Company

STATEMENT OF CLAIM:

"1. That the Chicago and North Western Transportation Company violated the current agreement effective December 1, 1985, specifically Rule 28(a) when Carrier Officers failed to timely deny claim of Traveling Mechanic Electricians J.P. Asaro, P.D. Chillemi, T.P. Detloff, R. Milosaljevic, G.O. Santana and K.A. Walker, within sixty (60) days, and Carrier's officers failed to allow the claim as presented, in accordance with the aforementioned Rule 28(a).

2. That the Chicago and North Western Transportation Company violated the current Agreement, in particular File No. 71 when Mr. A.D. Miller, Manager of Structures, issued a letter dated November 13, 1991 changing the on call hours as effects Traveling Mechanic Electricians, Messrs. J.P. Asaro, P.D. Chillemi, T.P. Detloff, R. Milosaljevic, G.O. Santana and K.A. Walker, on the Suburban Division.

3. That the Chicago and North Western Transportation Company be ordered to compensate Messrs. J.P. Asaro, P.D. Chillemi, T.P. Detloff, R. Milosaljevic, G.O. Santana and K.A. Walker, hereinafter referred to as Claimants, an additional three hundred forty-three point three (343.3) hours, at the penalty rate of time and one-half (1.5) as reflects those hours the aforementioned Claimants are now required to remain on call by reason of aforesaid letter.

4. That the Chicago and North Western Transportation Company, hereinafter referred to as Carrier, be ordered to pay the Claimants an additional three hundred forty three point three (343.3) hours each month, at the penalty rate of time and one-half (1.5) continuous until such time as the Claimants are not required to remain on call, twenty-four (24) hours per day, six (6) days per week."

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 employee 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 November 13, 1991, the Manager of Structures issued a document to all traveling mechanics which outlined Rule 71 concerning monthly rated employees assigned to road work, and the assertion that the monthly rate is based on 232.7 hours; hours in excess of the standard 40-hour week are intended to compensate the employee for responding to calls for emergency work and for being available for calls to perform emergency work.

The above-referenced document took the position that the employee is on call for trouble for all of the days of his regular assigment, including the sixth day, for 24 hours of each day, and referred to the fact that all traveling mechanics have been issued pagers so that they would be able to respond if called.

Finally, the document advised that there was no anticipation that the statement of on-call expectations would increase the number of hours worked by any employee.

The November 13, 1991 document prompted a claim since it implied to the employees that the traveling mechanics are expected to remain on call six days a week for 24 hours a day (since pagers had been provided), and the Carrier was thus demanding that the monthly rated employees remain on call without the benefit of additional compensation to which the claimants are entitled, i.e., 576 hours per month.

On February 7, 1992, the November 13, 1991 letter was cancelled in its entirety and the suburban division policy was stated to be:

1. When overtime emergency work is necessary, the Carrier expects a TM-E to respond.

2. TM-Es are required to be available during their normal work hours on their sixth day of the week.

3. Any TM-E who is not available for call on the sixth day will be considered to have laid off on his own account and will have eight hours pay deducted during that month, per Rule 71.

Once again, it was stated that Management did not expect the policies to either increase or decrease the number of hours worked by any employee.

On Februjary 18, 1992, the Carrier responded to the claim and denied that the November 13, 1991 correspondence in any way changed the on-call hours of any of the electricians on the division but, merely emphasized that time worked in excess of eight hours is covered by the monthly rate, nor had any claimants suffered any loss due to the action. The document also referred to the February 7, 1992 cancellation of the prior letter which "...effectively ends the claim at that time."

The Organization responded and disagreed with the conclusions of the Carrier concerning compensation obligations and demanded that claimants be compensated for the period between November 13, 1991 and February 7, 1992, since the Carrier improperly attempted to change the working rules and conditions of the monthly rated employees. The Organization did not agree that the employees remain on-call/stand-by (24 hours per day, six days per week), and the Rule was not written "...with the view that employees would be issued pagers in order that the Carrier be able to contact these employees no matter where they may be."

In the presentation to this Board, both parties have made various assertions and allegations concerning time limit problems, reliance upon documents not properly handed on the property, etc. As a result, we have confined our consideration solely to the matter as it was raised and discussed on the property.

Upon our reivew of the record before us, we are unable to conclude that the documents dealing with the employees' duties contain a significant alteration from the concepts of their duty prior to the issuance of the documentation. This, to some extent, seems to be somewhat borne out by the fact that during the period of almost three months, after November 13, 1991, there has not been a showing of any significant alteration in duty requirements or problems with compensation.

The employees bear the burden of proof in this type of a dispute, and we do not find that the Organization has presented sufficient evidence for us to conclude that it has established the basis for its claim by a sufficient preponderance of the evidence.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Ill. this 26th day of January, 1995.