

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13569

Docket No. 13393

00-2-98-2-81

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 30 when they utilized supervisors to perform wrecking service instead of calling a sufficient number of the regularly assigned wrecking crew from the established and agreed upon wrecking list.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Mark Derocher in the amount of seven (7) hours at the overtime rate and eight (8) hours at the double time rate for August 19, 1997 and nine (9) hours at the double time rate (instead of eight (8) hours at the straight time rate and one (1) hour at the overtime rate) for August 20, 1997.”

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 were given due notice of hearing thereon.

This claim arises from the Carrier's dispatching of the RC-130 Mobile Crane to a ten car derailment at Orono, Maine, on August 19, 1997 without the proper ground crew. As a result of a conference on March 20, 1998, the parties agreed to settle the claim on a compromise basis, and pay the Claimant 12 hours' pay. The underlying merits of the improper assignment of the wrecking crew is not before us. What is in issue in this case is whether the settlement agreed to by the parties was for payment at the overtime or straight time rate.

The record reveals that, after the conference held between D. F. Sibley, Assistant Vice President-Human Resources, and D. P. Fancher, Assistant General Chairman, Sibley confirmed the agreement by letter dated March 26, 1998. That letter sets forth the agreement as payment of 12 hours pay at the straight time rate. By Memo dated April 15, 1998, the Payroll Department was directed to make such payment. The Claimant received 12 hours pay at the straight time rate for the period encompassed by the claim.

Assistant General Chairman Fancher responded by letter dated April 17, 1998 setting forth his understanding that the agreement was to pay 12 hours at the overtime rate. Sibley's April 22, 1998 letter disagreeing recites the fact that various arbitration precedent was discussed at the conference concerning the fact that overtime is inappropriate for time not worked, and attaches his copy of notes of the conference indicating agreement to pay at the straight time rate. Fancher submits a copy of his notes of the conference indicating payment to be made at the overtime rates along with his April 28, 1998 letter contesting the fact that settlement on the Carrier's terms was reached. The matter has been progressed to the Board based upon the claim for the difference in pay between the straight time received by the Claimant and the overtime agreed to.

This unfortunate claim is the result of a case where the parties were able to utilize the conference for its intended purpose and resolve the underlying dispute concerning the alleged violation of the Agreement. It is important to note that for the conference to have any real meaning, the representatives of each party should have knowledge of

the relevant facts of the dispute and must have the authority to fully and finally dispose of the case at the time of meeting. In this case both the Assistant Vice President-Human Resources and the Assistant General Chairman, by virtue of the duties and responsibilities of their respective positions, had both knowledge of the pertinent facts and the ability to resolve the dispute there and then.

On the basis of a careful review of the record, the Board is of the opinion that the Organization's position that the overtime rate should have been paid to the Claimant under the terms of the settlement agreement must fail. First, the Carrier clearly understood and noted the terms of the settlement agreed to at the conference in its March 26, 1998 letter. The Carrier acted according to those terms by making payment at the straight time rate to the Claimant. Second, if we were to consider the Organization's notes to be conflicting evidence as to the terms of the settlement, we are left with an irreconcilable dispute in facts which we are unable to resolve. In such instances, the Organization is held to have failed to sustain the burden of proving its case, see Third Division Awards 28790, 31800; Second Division Award 12294. Third, even were we to find that the parties had not reached a valid settlement agreement in this case, Second Division precedent establishes that the straight time rate is appropriate to compensate for a violation of the Agreement for time not actually worked. Second Division Awards 10658, 10881, 10962, 13459.

For all of these reasons, the claim is denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 14th day of November, 2000.