

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13835

Docket No. 13689

05-2-03-2-11

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 28, when they refused to compensate Carmen T. M. Locke, K. M. Dyer and A. W. Sears with the correct rate of pay for time worked on December 6, 2001.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carmen T. M. Locke (6.5 hours at the straight-time rate), K. M. Dyer (4 hours at the straight-time rate) and A. W. Sears (8 hours at the straight-time rate). This is the amount of compensation they would have received if the carrier complied with our agreement.

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.

Claimants are seeking payment for additional double time rate of pay for continuing to work their regular assignments after working a derailment. There are no disputes on facts in this claim. All three Claimants have bulletined hours of 7 a.m. to 3 p.m., with rest days of Saturday and Sunday. On Wednesday, December 5, 2001, at 4:45 p.m., the Claimants were called to work a derailment. After working sixteen (16) hours to 12:45 a.m., Thursday, December 6, 2001, they went on double time payment as per the Agreement.

In this dispute, the Claimants continued working after the derailment when they returned to their assigned jobs at 7 a.m. on December 6, 2001. Claimant Dyer continued to work until 11 a.m., when he "marked off due to fatigue" and went home. The same reason was given for Claimant Locke, who marked off at 1:30 p.m. Claimant Sears worked his complete shift.

The claim was filed when the Claimants found their time cards changed from double time to straight time at the 7 a.m. beginning of their shift. Upon inquiry they were informed that they had the option of working for straight time or going home without pay. The Organization argues that the Carrier violated the Agreement by creating an "option" which Rule 28 does not have.

The Carrier maintains that it fully complied with the Agreement Rule and the practice on the property. It argues that the "option", stated or not stated was common practice. They were not required to cover their regular assignment after working the derailment, but could return home to rest.

In addition to a procedural argument, the Organization maintains that the Claimants are entitled to full double time payment until such time as they marked off. This is a contract interpretation dispute over the meaning of the following sections of Rule 28.3, which state:

- “(b) All service performed beyond 16 hours of service in any 24-hour period, computed from the starting time of the employee’s regular shift, will be paid at the rate of double time.**
- (c) Any employee who has performed more than 16 hours of service in any 24-hour period, computed from the starting time of the employee’s regular shift, and is required to continue in service after the expiration of said 24-hour period will continue to be paid at the double time rate.**
- (d) The double time payments referred to in paragraphs 28.3 (b) and (c) may be broken provided employees are permitted to go to bed for a period of 5 consecutive hours or more. If returned to service prior to the hours of their regular assignment, double time will be paid. Employees will be paid straight time from the beginning of their regular assignment, unless the provisions of paragraph 28.3 (c) apply.”**

The Organization is the moving party and must demonstrate a basis for their claim. The Organization relies upon the fact that the Claimants were called to an emergency and were paid overtime from 4:45 p.m. until 12:45 a.m., when they were paid double time under the above Rule. It disputes the right of the Carrier to return them to straight time when they continued to work, were not laid off, not permitted to go to bed for a period of five (5) consecutive hours and were required to move from work on the derailment to work on their regular assignment.

Our review of this record does not support the Organization’s claim. The Rule is clear on its face. The language of Section (d) states double time payments are broken if there were five or more hours of rest, or if the employee returned to their regular assignment, unless the provisions of paragraph 28.3(c) applied. In this instance, the Claimants returned to their regular assignments. Paragraph 28.3(c) would apply if they were “required” to continue in service. The burden of proof is to demonstrate that the Claimants were “required” to continue to work their regular assignments.

The Board finds no evidence that the Claimants were "required" to remain in service. The Carrier specifically stated that "they were not required to remain at work." The evidence in the record is that two of the Claimants "marked off due to fatigue" and went home. There is nothing in this record to demonstrate that they were forced to stay or disciplined for abandoning their jobs. With regard to the Carrier's actions, it states that "past practice has been that employees who chose to stay . . . received the straight time hourly rate." The Carrier maintained that this is a practice ongoing for seven years without dispute. This practice is confirmed by two statements from Supervisors. They both assert that once an employee worked at double time on a derailment, he continued at the double time rate:

"Until he was either put up for rest for five (5) hrs. or more or at which time he arrived at his home point. Once the employee arrived at his home point following wreck service the employee reverted to the straight time pay rate of the position he was assigned, provided he worked that assignment."

The Board finds no statements from employees in rebuttal to the above assertions. The burden of proof requires that the Organization provide substantial evidence that the language, practice or circumstances support its position. In this case, the language does not. Further, there are no special circumstances that make this claim unusual under this Agreement. Finally, the evidence of past practice supports the Carrier's interpretation. The Board finds no violation of the Agreement and by its conclusion considers the procedural issue resolved. The claim is denied for lack of proof.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of April 2005.