

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13860
Docket No. 13743
05-2-04-2-20

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

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: ((Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 28.3(d) when they failed to provide Carmen A. W. Sears and Richard Michaud with double-time during their regular shift, after returning from a derailment in Gray, ME on March 18, 2003.
2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman A. W. Sears and Richard Michaud in the amount of 7.45 hours of double-time, instead of the straight-time rate that they did receive.”

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.

The Board has carefully reviewed this claim. The undisputed facts are that the Claimants worked on a derailment in Gray ME. They worked their regular straight-time shift, went on time and one-half and subsequently went on working double time until they were informed that if they continued to work their assignment they would be paid at the straight time rate of pay. At bar, the Organization is alleging violation of Rule 28.3(d) which states that:

“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.”

It is the Organization’s position that the Claimants worked more than the 16 hours of the 24 hour period and therefore paragraph 28.3(b) and (c) applied. When it was time to continue into their regular shift, they were informed that instead of being given a 5 hour sleep break, they were to continue to work their regular shift, but at the straight time rate. The Organization points to 28.3(c) which states:

“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.”

The Organization contends the Carrier has violated the Agreement by requiring the Claimants to continue to work their regular shift, but failing to continue the double time payments. The Organization argues on-property that the Claimants “were required to continue in service by virtue of their job bid.” The failure of the Carrier to continue to pay them at the double time rate violated the Rule, supra.

It is the Carrier's position that it did not violate the Rule. The Carrier argues that the Assistant Manager informed both Claimants when they returned that "they were not required to continue in service upon their return." The choice to work was that of the Claimants and they continued to work. The Carrier argues that Rule 28.3 (c) states that double time pay is due when the employee "is required to continue in service" and these employees were informed that they could go home. As they were not required, the Agreement was complied with by the Carrier.

The Board has carefully reviewed the facts of this case. We find that it is essentially identical to those we have already considered in our Award No. 13835. The Carrier is correct. There is no proof that the Claimants were "required" to continue in service as the negotiated language mandates. For all of the reasons stated in Award No. 13835 and due to the fact that what is before this Board is the same issue and contract interpretation we settled in that Award, we are barred under the doctrine of res judicata, from adjudicating it again. Therefore, the claim is dismissed.

AWARD

Claim dismissed.

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 27th day of July 2005.