Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7256
SECOND DIVISION Docket No. 7079
2-LT-USWA-'77

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

Parties to Dispute: (United Steelworkers of America, AFL-CIO
(The Lake Terminal Railroad Company

Dispute: Claim of Employes:

(1) That under the controlling Agreement, dated December 1, 1974, the Carrier violated Rule 20(b) and Rule 19(a) when it refused to abide by the plain and unambiguous language of the Rules and established existing practices. In addition, the Carrier has permitted and continues to permit a diametrically opposed interpretation of Rule 19(a) to exist in the other departments which are under the same controlling Agreement.

(2) That accordingly, the Carrier be ordered to compensate the following employees, one hours pay, at their respective rate, at time and a half, less the amount they have already been paid (25 minutes) for these violations:

January 28, 1975, W. Sajdoh #1455
February 11, 1975, S. Toth #666; W. Anderson #1499, J. Uldrich, Jr. #1501.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 January 28, 1975, Claimant, Sajdoh assisted in a rerailment. The work was completed 45 minutes after his regularly assigned tour. When he was requested to work additional time, he declined and requested relief from duty. In addition to his regular pro-rata rate, he was paid for forty-five (45) minutes at the overtime rate.

On February 11, 1975, three Claimants assisted in a rerailment, and spent twenty (20) minutes beyond their regular tour. When they were requested to work additional time, they declined and requested relief from duty. Each received twenty (20) minutes pay at the overtime rate, in addition to the regular pro-rata rate.

The Carrier concedes that when the employees were taken from their regular maintenance duties on the claim dates, they were performing work "in an emergency" (see Page 4, Carrier's Ex Parte Submission) for the period of time they actually worked.

Accordingly, the Organization asserts that a combined reading of Rules 19(a) and 20(b) support its claim for one hour of premium pay for each Claimant on the days in question.

Article 19(a) states:

> "(a) Effective January 1, 1975, time in excess of eight (8) hours shall be considered overtime and paid for at the rate of time and one-half with a minimum of one (1) hour. (Agreement dated November 23, 1974)."

Article 20(b) states:

> "(b) Employees who are called and report for emergency work will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid a delay."

Claimants argue that there is no regularly assigned work of rerailments. Thus, when the Foreman designated the employees as part of the work crew, they were automatically placed within Rule 20(b). Further, the Claimants insist that when Rule 19(a) was negotiated, it was agreed that the one hour minimum was included to compensate employees for various inconveniences, and the Organization intended that Rule 19(a) was to be applied in the same manner as Rule 19(h), which dealt with early call-outs.

The affidavits submitted in support of the Organization's case state the employees' understanding and intention that the concepts of Rule 19(h) would control. They do not state that any such understanding was reached bi-laterally between the parties.

Rule 20(b) speaks of rights of employees "called" to work, as do Rules 20(a) and (c). Thus, for Rule 20(b) to be operative, we find that an employee must have been summoned to work, rather than remain at work for a period of time contiguous to his regular shift. Because this record shows continuous duty, a limitation of duty to "emergency work" only is not in issue.

Rule 19(a) guaranteed a minimum of one hour if held beyond eight hours (assumedly to compensate for resultant inconveniences), but it does not limit the character of the work which may be performed. Thus, we feel that Carrier's contention that these Claimants could be required to work both emergency and/or non-emergency types of work has merit.

In our view, once the employees were required to work past their normal shift ending time, they were entitled to an hour of work (or pay, if the Carrier had no work for them to perform); but, they could not refuse to perform non-emergency work and demand payment for the minimum hour.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of March, 1977.