

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Council Number Eight, International Brotherhood
(of Electrical Workers
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(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it improperly denied five hours of compensation to Electricians Mark Joslin and Michael Obucina on May 31, 1980 for an overtime call.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Mark Joslin and Michael Obucina for five hours of compensation each at the rate of \$9.55 per hour.

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 Friday, May 30, 1980, Claimants were notified to report for duty at 7:00 a.m. at the Milwaukee, Wisconsin Freight Shop Building on Saturday, May 31, 1980, a regular day-off for them. They did so, reporting according to the Claimants some time prior to 7:00 a.m. At a time which is in dispute, but after 7:00 a.m., the Claimants left the gate area of the Freight Shop account no member of supervision had arrived to open the facility or, to assign them work. According to the Claimants, they remained at the facility until 7:20 a.m. and then returned to their homes; according to the Carrier, they were observed by one of the supervisors leaving at 7:11 a.m. The Carrier also asserts that the Claimants knew what their work assignment was to be -- work on an overhead crane-- and that the Claimants could have gained entry via certain doors that were unlocked or by getting the security forces to use their keys.

The Organization contends violation of Rules 3 (1) and 9 before the Board as bases for claims in this case. Rule 3 (1) deals with "services rendered" on assigned rest days: Rule 9 is a "call back" provision. The Carrier, before this Board, points out that the Organization only raised Rule 9 in handling on the property and thus has cited an inappropriate Rule as authority; it also points to

the "services rendered" criteria, found in both Rules, as being the proper basis for denial of such compensation. Here, the Carrier points out, no services were rendered and thus no compensation is deserved. On the merits, the Carrier asserts that the Claimants departed the facility prematurely instead of awaiting the arrival of the supervisors who were delayed slightly; instead, the Claimants could have and should have gone on into the facility and began gathering their work tools for the work they already knew about. The Organization contends that the Claimants were precluded from entry of the facility without proper authority -- which they did not have -- and were not specifically assigned to any job. As the requirement that they remain at the gate, the Organization contends the Claimants were obligated to report for duty at 7:00 a.m., which they did; barring advice to the contrary, they left when no supervisor appeared.

The Carrier's otherwise well-founded argument before this Board that the Organization cited the wrong Rule (#9) in its presentation on the property is undermined by the fact that it (the Carrier) failed to raise this defense on the property at any point in the handling of this claim. Nonetheless, the burden is on the Organization to properly raise the claim. As to the merits, there is no doubt that the Claimants reported as directed; this was confirmed by a security personnel. This same source established 7:11 a.m. as the time when the Claimants left to return home.

While we note the lack of precision of the claim, citing as it did the wrong Rule, such flaw is not considered fatal to this case. This and other Boards have long held that where the record shows that all interested parties are fully aware of the basis for charges, hearings, etc., a procedural error cannot be construed to negate an otherwise meritorious claim. On the merits, we find that the Claimants inappropriately left the facility without a proper basis to do so. They were entitled to pay after 7:00 a.m. even while sitting in the security room awaiting the arrival of their supervisor and could not reasonably be denied such pay merely because their supervisors did not arrive timely. We are mindful that the Claimants gave up several hours of their regular off-day to report for duty, but their departure 11 minutes after such work was to commence was ill-conceived: one might reasonably speculate on the results if other employees' ability to work on that Saturday depended upon the Claimants performing their duties. Nonetheless, to the extent that they were out-of-pocket in complying with the order to report for duty and properly did so, the Claimants are entitled to some compensation. The Award is drawn accordingly.

A W A R D


While the Claim is denied on the charge as raised, the Claimants are entitled to compensation for one (1) hour at the appropriate overtime rate for reporting for duty but denied the remaining four (4) hours pay for their departure 11 minutes after their reporting time.

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Award No. 9273
Docket No. 9401
2-CMStP&P-EW-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board.

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this, 28th day of July, 1982.

