

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

(Brotherhood Railway Carmen of the United States and
(Canada

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, when on the date of June 18, 1984, they allowed individuals not so entitled to work under the provisions of Rule 24 1/2, and in so doing deprived Claimants herein, Carman N. Pickrell and M. Schmidt.

2. That accordingly, Carrier be ordered to compensate Claimants Pickrell and Schmidt for all time lost as a result of such violation: eight (8) hours pay at the time and one-half rate.

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 employes 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 facts are undisputed. On June 18, 1984, the Carrier called and used two (2) furloughed carmen to perform service under Rule 24 1/2 on the first shift at its DeCourtsey Car Shop. The Carrier acknowledges that as a result of a "mix-up" they were again called and used to fill two vacancies on the third shift within the same twenty-four (24) hour period.

A claim was filed on behalf of Claimants both of whom are employed by the Carrier as carmen, for eight (8) hours' pay at the time and one-half rate on the grounds that Rule 24 was violated when the Carrier called and used two (2) furloughed carmen to work sixteen (16) hours within a twenty-four (24) hour period. It is undisputed that the Carrier violated Rule 24 1/2 which prohibits it from calling and using furloughed employees for a "second tour of duty" within a "24-hour period beginning with the starting time of the first shift."

The only issue to be resolved by this Board is whether the Agreement requires the Carrier to compensate the Claimants for work lost at the rate of time and one-half. After carefully examining the positions of the parties, it is the judgment of the Board that the Claimants are to be awarded the pro rata rate which is the compensation for work not performed. As stated in Second Division Award 6359, "...the overtime rate is applicable only to time actually worked, the pro rata rate is the measure of value for work lost." No provision in the Agreement has been called to the Board's attention which provides for the time and one-half rate when work is not performed by the Claimant. See, e.g. Second Division Award 6559. Since Claimants did not perform work when the two (2) furloughed carmen performed service again within the same twenty-four (24) hour period, they are entitled to the pro rata rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1988.