

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

PARTIES TO DISPUTE: (J. Matejek
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

A. That under the current agreement Carman J. Matejek was unjustly dealt when the Missouri Pacific Railroad Company declined to pay him for service rendered outside of his bulletined hours on April 26, 1987.

B. That accordingly, the Missouri Pacific Railroad be ordered to compensate Carman J. Matejek in the amount of two (2) hours and forty (40) minutes at the time and one half rate for service rendered outside his bulletined hours on April 26, 1987.

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 waived right of appearance at hearing thereon.

At the time this Claim arose, Claimant was employed as a Carman at the Carrier's Settegast Yard at Houston, Texas. His regularly assigned hours were 11:00 P.M. to 7:00 A.M. On April 26, 1987, Claimant worked past his normal quitting time when he was unable to complete his assigned work until 7:15 A.M. At 7:15 A.M., when Claimant was preparing to go home, Claimant's Foreman assigned him to inspect another train. Claimant completed that assignment at 8:20 A.M., after which he went home. Claimant received overtime payment, at the rate of time and one half, for one and one half overtime hours on that morning.

Thereafter, Claimant instituted this Claim alleging a violation of Rule 4(d) of the Agreement. Claimant asserts that, under Rule 4(d), he was entitled to be paid for at least two hours and 40 minutes for the extra assignment given him on the morning of April 26, 1987. The Carrier argues, first, that the Claim is procedurally defective because it was not progressed to the Board within nine months of denial by the Carrier's highest designated official, as required by Rule 30(c). The Carrier also argues that the Claim is defective on its merits because Rule 4(a), not Rule 4(d), applies to Claimant's situation.

Rule 4 reads as follows, in pertinent part:

"RULE 4. OVERTIME AND CALLS

(a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour.

(b) Employees shall not be required to work more than two (2) hours after regular working hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

(c) Employees called or required to report for work and reporting but not used will be paid a minimum of four (4) hours at straight time rates.

(d) Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two hours and forty minutes or less and 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 delays to train movements."

The Carrier is clearly correct that Rule 4(a) covers this Claim, and not Rule 4(d). Claimant was held over to continue his service to the Carrier after his regular working hours, and was paid time and one half for the actual overtime he worked. Paragraphs (a) and (b) of Rule 4 address such situations. In contrast, Paragraphs, (c) and (d) of Rule 4 address instances in which employees are called in from off the Carrier's property, not at the conclusion of their regular hours.

Since Rule 4(a) and not Rule 4(d) applies to this case, and because the Carrier complied with the requirements of Rule 4(a), the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1991.