

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12666
Docket No. 12543
94-2-92-2-78

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the N&W Railway Company violated Rule 10 and 7 of the September 1, 1949 Agreement when on April 24 and 25, 1991, they failed to compensate Carmen A. V. Lewis, B. L. Blackburn, C. C. Justice, A. R. Hayton and J. R. Davis assigned to the Williamson, WV Wreck Car Crew at the rate of double time for all work beyond sixteen hours within a twenty-four hour period computed from 7:00 a.m. which was the regular starting time.
2. That because of such violation the Norfolk and Western Railway be ordered to pay Carmen A. V. Lewis, B. L. Blackburn, C. C. Justice, A. R. Hayton and J. R. Davis each the difference between the time and one-half rate that was actually paid and the double time rate that should have been paid for the eight (8) hours worked from 11:00 p.m., April 24, 1991 until 7:00 a.m., April 25, 1991."

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.

There is no dispute on the facts at bar. Claimants were assigned to the Williamson Shop facility which worked from 7:00 A.M. to 3:30 P.M. weekdays. On April 24 and 25, 1991, Claimants

who were assigned to the Williamson Wreck Crew were called to perform wrecking service. The central dispute is over payment to the crew for time worked beyond sixteen (16) hours of the twenty four (24) hour period beginning 7:00 A.M. on April 24, 1991. Specifically, the parties do not agree on the appropriate payment to Claimants from 11:00 P.M. April 24, 1991 until 7:00 A.M. on April 25, 1991.

The Organization alleges that Carrier has violated the Agreement in failing to pay Claimants the double time rate as required by Rule 7 of the Agreement. That Rule states:

"Rule No. 7 - OVERTIME

Except as otherwise provided for in this rule, all overtime beyond sixteen hours of service in any twenty-four hour period, computed from starting time of employees' regular shift, shall be paid for at rate of double time."

The Organization argues that overtime for service is paid under the language of Rule 10 which states "in accordance with the practice at home station." Accordingly, the Carrier's payment of time and one-half violated the Agreement.

The Carrier denies any Agreement violation. It argues that Rule 7 has no applicability to wrecking service. The Carrier maintains that there exists no Rule in the Agreement that provides double time for emergency wrecking service and in fact, the applicable Rules, including Rule 14 make no provision. The Carrier further relies upon Article V of the April 24, 1970 Mediation Agreement to support its position and maintains that emergency work is excluded from the double time rate of pay.

The Board finds the April 24, 1970 Mediation Agreement is not on point. That Agreement language is specific to overtime for employees on their second rest day of assignment and not applicable in this case.

The language of Rule 10 which is applicable to emergency service specifies that "wrecking-service employees will be paid under this rule" and further states that they will be paid "in accordance with the practice at home station." The Organization argues on property that:

"Double time after sixteen (16) hours in road or wrecking service (emergency) has been paid at the double time rate on Norfolk and Western Property, Car Department, in line with Rule 10

for over forty (40) years." (emphasis in original)

The Organization's assertion was supported by a notarized letter from a former Carmen that he had been paid "double time after 16 hours while on duty during my 17 years as a member of the Williamson Wreck Crew." The Carrier's sole rebuttal was that "while this may have occurred in the past, it was in error..." The Board finds sufficient proof of said practice supported by Agreement language.

Rule 10 requires payment under the Rule for wrecking service "in accordance with the practice at home station." The evidence of record supports that payment has followed Rule 7 which states that "all overtime beyond sixteen hours" in any twenty-four hour period is "paid for at rate of double time." Under the facts at bar, the Organization has provided sufficient probative evidence to prove that on this property, the Rules provide for the payment as argued. Accordingly, the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 16th day of February 1994.