

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12976
Docket No. 12793
96-2-93-2-153

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

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim and grievance submitted to the Consolidated Rail Corporation by the IBEW Local Committee on behalf of Radio Maintainer R. E. Conrad, Altoona, PA Radio Shop, by a letter dated June 29, 1990, and which is referred to as follows in the Joint Submission in this case, which is Harrisburg Division Case No. 41015038:

SUBJECT:

IBEW GRIEVANCE J 17-90: This union charges management with the violation of the controlling Agreement, specifically 4-B-2(b) when on May 20, 1990 the claimant was not paid by the Carrier at the double-time rate for work performed. The claimant worked on an overtime basis from 7:00 am to 4:00 pm on the Dispatcher Consolidated System. He also installed a radio in Police Vehicle B-5155. The claimant was compensated at 1-1/2 times his rate of pay on this date. The claimant worked all his scheduled hours of his assignment from Monday through Friday. The Claimant then worked on Saturday May 19 on a scheduled overtime basis. Under Rule 4-B-2(b), which covers the Radio Maintainers, it is clear that the claimant should have been compensated at double his rate of pay for scheduled overtime on the above stated date.

Therefore this union is asking for the difference between 1-1/2 and two times the claimant's pro rata rate of pay for 8-1/2 hours.

The claim is subject to Rule 4-P-1."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The dispute at issue concerns a determination as to whether the Claimant, a monthly rated employee, is entitled to double time pay, as claimed, for work on a Sunday rest day, as opposed to compensation as allowed at the time and one-half rate of pay.

It is the position of the Organization that the Claimant is entitled to compensation at the double time rate of pay under Rule 4-B-2(b) of what it says is the controlling agreement. This Rule provides, in part, that "... service performed by a regularly assigned employee on the second rest day of his assignment shall be paid at double the basic straight time rate."

The Carrier says that as a Radio Maintainer assigned to a position at Altoona, Pennsylvania, that the Claimant was not subject to Rule 4-B-2 of the July 1, 1979 Conrail/IBEW Agreement. It says the Claimant was covered by Rules 3 and 12 of the former NYC/IBEW Agreement, which Rules provide only time and one-half, not double time, for work performed on a monthly rated employee's rest day.

Rule 3 states that "... service performed on the employee's rest day shall be paid for at the rate of time and one-half." Rule 12 provides that monthly rated employees receive a set number of straight-time hours per week, and says that such employees "... shall be assigned one regular rest day per week, Sunday if possible."

The Carrier says that Saturday, May 19, 1990, was not a rest day for the Claimant, but rather a "standby" day on which he was required to remain available for work at its option, albeit the Claimant did work on a scheduled overtime basis on such date. In any event, the Carrier submits, work performed on the claim date, Sunday, May 20, 1990, the Claimant's only rest day for the week, was payable at the time and one-half rate pursuant to Rule 3.

The Board finds in study of the record that there is sound reason to hold that Rule 4-B-2(b) of the July 1, 1979 Agreement was amended by a second Agreement between the parties, i.e., the September 21, 1979 Agreement, wherein, among other things, it was stated:

"Radio Maintainer positions located at Altoona . . . shall be covered by the former NYC-IBEW Communications Agreement."

In view of the foregoing, the Board finds that Rules 3 and 12 of the former NYC-IBEW Communications Agreement constituted the controlling Agreement Rules for the payment of the work at issue. The claim will therefore be denied for lack of Agreement support.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 2nd day of February 1996.