Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13127
Docket No. 12929
97-2-94-2-59

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen, Division of
(Transportation Communications International Union
(
(Patapsco & Back Rivers Railroad Company

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Carrier is in violation of Rule 7, of the controlling Agreement, by not paying Sunday Premium on overtime.

2. That the Carrier be ordered to pay Sunday Premium on overtime as required under Rule 7, of the controlling Agreement."

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 were given due notice of hearing thereon.

By letter dated July 29, 1993 the Organization filed this instant claim alleging Carrier's failure to properly pay the Sunday Premium on overtime in violation of Rule

7. According to this record, Rule 7 was negotiated in 1987 with a "me too" commitment on Sunday overtime which extended to the employees a rate of time and three quarters extracted from a labor Agreement with the United Steelworkers of America (USWA). There is no dispute herein that the Carrier extended to the affected employees wage increases granted under the 1987 USWA Agreement. These increases called for a blended rate of overtime and Sunday Premium.

The facts at bar are that on October 21, 1991, a new Agreement was entered into with this Organization. Rule 7 (Sunday Premiums) in the 1987 Agreement was carried over in the 1991 Agreement with only one change. The 1987 Agreement stated in place of the underlined portion to follow, "a premium of 25%." The 1991 Agreement states Rule 7 as follows:

> "For all time worked on Sunday that is not paid for on an overtime basis, a premium of 50% based on the straight time rate of pay shall be paid. For the purpose of this Rule, Sunday shall be deemed to be the 24 hours beginning at 12:01 A.M. Sunday or at the turn-changing time nearest thereto."

The Organization argues that neither Rule 7 in either the 1987 or 1991 Agreement contained language calling for a blended rate. The Organization maintains that the new Agreement incorporates all the understandings of the negotiation and as the blended rate of time and three quarters had been incorporated into the Rule 7 application prior to 1991, it was incorporated thereafter. The Organization presents evidence and argument to demonstrate that for nearly two years the Carrier continued this understanding whereby it actually paid the blended rate. The essence of this claim is that a practice was established, the Agreement language continued and employees now entitled to the overtime rate of 50% of their hourly wage in addition to their hourly wage, plus the Rule 7 Sunday Premium.

The Carrier's argument in this dispute is to point to the Agreement. That Agreement includes Rule 8, an Overtime Rule and Rule 7, a Sunday Premiums Rule. The Carrier argues that nothing in this Agreement provides for a continuation of the former "me too" commitment of blending the Rules. The Carrier maintains that there has been no acquiescence, but only an error in its continued payments to employees of a blended rate. In its letter of August 6, 1993, the Carrier argues it "unequivocally rejected" the continuation of such payments which ended with the new 1991 Agreement.

The Carrier argues that it notified payroll to stop the payments after the 1991 Agreement. However, payroll improperly paid the amount until it was detected. The Carrier argues that it is not in violation of the Agreement.

The Board has read, studied and seriously considered all of the many issues raised by the parties to this dispute. Close scrutiny of the Agreement and evidence fails to demonstrate governing language which has been violated by the Carrier. The Board's obligation is to interpret and apply contractual language as negotiated by the parties. In this instance there is simply no language presented before us as agreed and negotiated to support the claim. As for the "me too" agreement prior to 1991, as well as the continued Carrier payment thereafter, they do not support the claim. There is no substantial or probative evidence that the "me too" agreement endured and certainly no language to that effect before us and governing our decision. As for the continuation of payments which the Carrier stated were "improperly paid" there is nothing that prohibits the Carrier from correcting its error. Given this contractual language the Board cannot require under the notion of established practice, that the Carrier is forced to continue erroneous payments not provided by the Agreement. The Board must deny this claim as lacking proof that the 1991 Agreement has been violated by the Carrier.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of June 1997.