

Award No. 5519
Docket No. MW-5476

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when it required Bridge and Building Foreman J. P. Howard and members of his crew to suspend work during their regular assigned hours on July 22, 1949;

(2) Bridge and Building Foreman J. P. Howard and his crew be compensated at their respective straight time rate of pay for the three (3) hour period they were denied the right to work on July 22, 1949.

EMPLOYES' STATEMENT OF FACTS: Prior and subsequent to July 22, 1949, B&B Foreman J. P. Howard and crew, were assigned to work from 7:00 A.M. to 4:00 P.M., with one hour for lunch.

On July 19, 1949, Master Carpenter Walsh notified Foreman Howard that for one day only, July 22, he and the members of his crew would be required to work from 4:00 A.M. to 1:00 P.M.

Foreman Howard and his crew were paid at the punitive rate for services rendered from 4:00 A.M. to 7:00 A.M. and at the straight time rate for services rendered between 7:00 A.M. and 1:00 P.M.

The Employees contended that Foreman Howard and his crew had been deprived of the right to work the last three hours of their regular assignment and filed claim in favor of the employees in the amount of three hours each at their respective straight time rate of pay.

Claim was declined.

The agreement in effect between the two parties to this dispute dated December 1, 1946, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Bridge and Building Foreman J. P. Howard and the following members of his crew:

of their regular assignment, in conformity with the provisions of Rules 31 and 39(a).

(2) The awards of the Third Division support the Carrier's position that a double penalty, as herein claimed, is not contemplated by the rules, and is unfair, unjust and inequitable.

(3) With these irrefutable facts and circumstances present, Petitioner's claim is totally lacking in contractual substance and is clearly contrary to the principles established by the Third Division and must, therefore, in all things be denied.

OPINION OF BOARD: Claimants, regularly assigned 7 A.M. to 4 P.M., were required on one of their assigned days to work from 4 A.M. to 1 P.M. They were paid pro rata rate and filed a claim requesting punitive rate for service performed 4 A.M. to 7 A.M. and pro rata rate for hours suspended from assignment 1 P.M. to 4 P.M. Carrier acknowledged a violation of the agreement, allowed the claim for the overtime rate for the work outside of the regularly assigned hours and declined the claim for pay for time suspended from assignment.

The Carrier resists this claim as constituting a double penalty for a single act which is not allowable under our awards. Carrier alleges that in conformity to our awards it paid the heaviest of the two penalties and is thus exonerated.

One penalty was the difference between the pro rata and the overtime rate or one-half time for three hours. The other penalty was pro rata rate for three hours. Thus, it is obvious that the Carrier did not pay the heaviest penalty so it is not exonerated. We cannot relieve the Carrier from the consequences of its voluntary payment and conclude that the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.