Award No. 10941
Docket No. CL-10123

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: We claim that the Chicago and Western Indiana Railroad Company acted contrary to the intent of Rule 15(g) of the currently effective agreement between the parties to this dispute when, since August 1, 1957 it failed and refused and continues to fail and refuse to compensate its Station Red Caps covered by the agreement in accordance with the above mentioned Rule 15(g) when such Red Caps have been and are used to perform service in excess of their individually assigned forty (40) hours per week.

We request the Company now to pay Red Caps W. Montgomery, Norman Goodman, Hurshell Stevenson and all other Red Caps, who were required to perform service in excess of their individually assigned forty (40) hours per week, the difference between what the Company has paid and continues to pay Red Caps under method presently existing of computing overtime in excess of forty (40) hours per week, and the compensation to which they are entitled under the method required by Rule 15(g) of the Agreement beginning August 1, 1957, and continuing until the violation herein claimed has ceased for each week in which the aforementioned Red Caps covered by the agreement have performed or continue to perform service in excess of their individually assigned work week of forty (40) hours.

STATEMENT OF FACTS: On July 31, 1957, Carrier was advised by the Organization (United Transport Service Employees, AFL-CIO) that we expected proper compliance with the overtime rule of the current agreement, Rule 15. (See our Exhibit A.)

During the payroll period of August 16 to 31, 1957, Carrier authorized Messrs. Montgomery, Goodman and Stevenson to perform work in excess of forty (40) hours in their assigned work week.

On September 19, (see our Exhibit B) we filed a claim in behalf of the above named employes, and also, in behalf of all other employes who were required and who may be required to perform work in excess of forty (40) hours in their assigned work week. Such claim to continue

A Red Cap could be worked, under the existing rule, as much as 120 hours in his assigned five work days without receiving payment at the overtime rate of time and one-half.

It is evident, therefore, that the employes recognized the manner and method of compensating Red Caps, which has been in effect since September 1, 1949, as proper and as was agreed to in the negotiations leading to the agreement made effective on that date. (September 1, 1949).

In the handling on the property the carrier took the position that the claim on behalf of Red Caps Montgomery, Goodman and Stevenson (instant case) did not specify dates on which it is alleged Rule 15(g) was violated, therefore, could not be properly considered, particularly in the light of Rule 13(b) which reads:

> "Claims arising under this agreement shall not be subject to monetary recovery unless presented within thirty (30) days of the date of events or circumstances giving rise to the claim."

The carrier advised the employes that rule 13(b) must be complied with and any claims for monetary recovery must be submitted individually with sufficient information and dates to permit proper investigation and consideration.

The submission of this dispute to the Third Division in such general way is an effort to evade compliance with rule 13(b). Certainly any decision on a claim involving monetary recovery, could not be consistently made in the light of the requirements of Rule 13(b) without specific dates on which the alleged violation occurred.

The carrier asserts the claim is not proper and without merit. It should be denied.

All matters referred to herein have been made known to the employes either orally or by correspondence.

OPINION OF BOARD: Claims are made here by three named employes and all other Red Caps who were required to serve in excess of forty (40) hours per week, as set out in the Statement of Claim herein.

The Organization contends that such employes, should now be paid the difference in pay by which the employes were paid, and what they are entitled to for pay at the overtime rate as set out in rule 15(g) of the effective Agreement between the parties, for a continuing period from August 1, 1957.

Carrier contends first that neither the Organization nor the employes, have complied with the provisions of Rule 13(b) of the Agreement between the parties. The record shows that the Organization presented its claim involved here, by letter to Carrier, dated September 19, 1957. See Employes Exhibit "B".

For its second contention Carrier relies on the provisions of Rule 15(f) and (i), and states that payments made said employes were proper, and correct, and that the claims as made under Rule 15(g) were improper

and not submitted individually, and without sufficient information and dates to permit proper investigation and consideration by Carrier.

Upon a thorough review of the record before us, the Organization has given no specific dates on which Carrier has allegedly violated the provisions of the Agreement, nor the hours of overtime service for which claim is made. The only mention made of dates involved here is the following:

> "During the payroll period of August 16 to 31, Carrier authorized Messrs. Montgomery, Goodman and Stevenson to perform work in excess of forty (40) hours in their assigned work week."

The above quotation is taken from the Ex Parte Submission by the Organization, when this cause was filed with this Board. No such information was presented Carrier, during the time this cause was being progressed on the property.

Rule 15(g) on which the Organization relies, is as follows:

> "(g) — Work in excess of (40) straight time hours in any work week shall be paid for at one and one-half times the basic rate, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list."

The record here shows that the petitioners have failed to comply with the provisions of Rule 13(b). No proof is offered to satisfy the requirements of this rule, no dates or information have been furnished the Carrier to determine if any of the employes worked in excess of forty straight time hours in any work week, which would entitle such employes to be paid at the overtime rate as provided in Rule 15(g); and alleged by the Petitioners.

The record here does not support a sustaining award. This Division in Award No. 10785, recently disposed of a docket, on this Carrier's property, and with the same Organization. What this Division ruled in this prior award, applies to the matter before us here in reference to Rule 15(f), (g), (h) and (i). After giving due consideration to the referred to portions of Rule 15, and considering all the sections of the rule as a whole, we find that the record is wholly insufficient to support a sustaining award in favor of the employes, and against the Carrier.

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 the Employes involved in this dispute are respectively Carrier and Employes 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 did not violate the effective Agreement.

AWARD

Claims denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.