

Award No. 12786
Docket No. CL-12401

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO**

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim involves J. Caputo, Crew Caller. It is requested that he be paid eight (8) hours at the straight time rate for August 8, 1959. On this date a crew was called to work and being the senior laid off Crew Caller, I should have been called to perform the duties of a Crew Caller. This is a violation of Rule 1, paragraph 1 of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: This claim arose at Donora, Pa., and is known as Clerks' Claim No. 7-59.

J. Caputo is a Crew Caller and as such should have been used when the carrier needed a train crew to be called to perform work for the carrier.

The carrier also stated in their answer that Crew Caller J. Caputo was not the oldest senior available furloughed employe, but the organization does have the right to put in a claim for an employe and such employe shall be paid if there is any pay due the employe.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective July 16, 1953 and revised October 1, 1957 with the Donora Southern Railroad Company, covering the Clerical, Office, Station and Storehouse Employes, a copy of which is on file with the Board and is by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYES: That when the carrier used someone else other than a Crew caller to call the train crew that the Clerks' Agreement Rule 1, paragraph 1 was violated as this rule reads as follows:

"RULE 1

SCOPE

These rules shall govern the hours of service and working conditions of all employes at Donora, Pennsylvania, engaged in the work of the craft or class of clerical, office, station and storehouse employes, subject to such modifications as are included herein. **Positions or work**

CARRIER'S STATEMENT OF FACTS: Prior to the date of this claim the Carrier's principal shipper closed its operations due to a nationwide steel strike, resulting in discontinuance of all transportation service. On the date in question an engine and ground crew were required and, in the absence of a Crew Caller, a Supervisor in the Transportation Department called out the five (5) extra men. This required not more than ten (10) minutes of telephoning. In discussing the claim on the property, the Carrier admitted the violation, denied the claim for eight (8) hours, and offered to pay the claim under paragraph (a) of Rule 7, Notified or Called, which reads:

"(a) Employees notified or called to perform work outside their regular hours either before or after, but not continuous with the regular work period, shall be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less; and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half shall be allowed on the minute basis."

The Committee declined to accept four (4) hours in payment of the claim, and accordingly the claim was denied.

POSITION OF CARRIER: The sole issue in this dispute is whether the claimant is entitled to payment of eight (8) hours at straight time rate, as claimed, or whether the penalty for the violation is satisfied by payment of a four (4) hour call under Rule 7 (a). Since the calling of the crew required ten (10) minutes or less, the payment of a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less is expressly provided by Rule 7 (a).

Since the date this claim arose, precedent for payment under the Call Rule has been established by the acceptance of the Organization on final appeal stage of a four (4) hour call in two (2) similar cases.

In Claim No. CL-11-60 an identical claim was "amended by the Grievance Committee to be for one four (4) hour call to the senior qualified furloughed claimant" and was allowed "under Rule 7 (a)." This allowance was confirmed in Carrier's letter to International Representative J. Schawinski dated October 28, 1960.

Likewise, in Claim No. CL-21-60 a claim was allowed to the Clerk's representative on the Local Grievance Committee for four (4) hours account of a small amount of yard checking being performed by Supervisors during a strike period. This allowance was made without precedent because there was a question whether the claimant would have responded to a call during a strike of another Brotherhood. The establishment of a four (4) hour call as a proper penalty was accepted. The allowance was confirmed in letter to International Representative J. Schawinski dated December 9, 1960.

By reason of the clear language of Rule 7 (a), as well as its interpretation for which precedent has been established, it is respectfully submitted that the payment of a four (4) hour call would satisfy the claim and that the claim for eight (8) hours at straight time rate should be denied.

OPINION OF BOARD: The essential facts in this dispute are not in issue. On the date of the instant claim when the Carrier required a train crew to be called, a Supervisor called out members of a yard crew. Petitioner contends and the Carrier concedes that Rule 1 of the Agreement between the parties was violated by this action as the calling of Train Crews is the function of Crew Callers.

Carrier denied the claim for eight hours' pay and offered to settle the dispute in accordance with provisions of Rule 7 of the Agreement, the pertinent part of which provides as follows:

"(a) Employes notified or called to perform work outside their regular hours either before or after, but not continuous with the regular work period, shall be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less; and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half shall be allowed on the minute basis."

Petitioner contends that the provisions of Rule 7 (a) are not applicable and that the Claimant should be paid eight (8) hours at the straight time rate in accordance with Rule 2, Section 1 of the Agreement which provides as follows:

"1. Day's Work

Except as otherwise provided herein, eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work, for which eight (8) hours' pay shall be allowed."

The Carrier has admitted violation of the Scope Rule of the Agreement and the only remaining issue is the disposition of the compensatory claim. The record shows that the Petitioner agreed to the settlement of two subsequent similar claims under the provisions of Rule 7 (a). Neither Rules 2, Section 1 nor Rule 7 (a) are entirely applicable to this situation and we find merit in the action taken by the parties in disposing of similar claims by the payment of compensatory awards under Rule 7 (a). Here the evidence shows that the actual time involved in calling the train crew was not more than ten minutes and no evidence was adduced to support Petitioner's premise that the Crew Caller would have been required to work as long as the train crews. Therefore, the claim should be sustained and the Claimant should receive payment for a minimum call under Rule 7 (a) of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement of the parties was violated.

AWARD

Claim sustained as modified by the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.