Award No. 12908
Docket No. MW-12869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it improperly required Track Laborer Sam Clariday to suspend work on August 4 and 5, 1960.

(2) Track Laborer Sam Claridy now be reimbursed for the sixteen (16) hours of straight time pay which he lost because of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: As of July 31, 1960, Track Laborer Sam Claridy was regularly assigned to the section at New Smyrna Beach, with a work week of Saturday through Wednesday, and with rest days designated as Thursdays and Fridays.

Because of force reductions which became effective at the close of work on Sunday, July 31, 1960, the Claimant, effective as of the beginning of work on Monday, August 1, 1960, exercised seniority rights to a section laborer's position at Bowden Yard which is regularly assigned to work Monday through Friday, with Saturday and Sunday as designated rest days.

The Claimant reported for work on his new assignment on the morning of the first work day of his new work week and was permitted to work that day and also on the following Tuesday and Wednesday. However, as Roadmaster Heaton stated in a letter dated August 30, 1960:

"* * *

I have your letter of August 19, relative to Track Laborer Sam Claridy, who exercised his seniority on the Bowden Yard Section August 1, 1960.

As you know, this man's regular assignment of five days per week, at the time he was displaced, was Saturday through Wednesday, with rest days Thursday and Friday. According to my records

". . . In addition, under Awards of this Division, the claimant should receive the pro rata pay, the principle announced being that employes who do not work should not receive overtime rates of pay, seems applicable here. See Awards 4196-4244."

and in Award 5978:

". . . The general rule is that the right to work is not the equivalent of work performed so far as overtime is concerned. Consequently, time not actually worked cannot be treated as overtime unless the Agreement specifically so provides."

Also see Third Division Awards 8337, 8293, 8041, 7956, 6241, 6217, 6216, 6095, 6019, 6016, 5638, 5620, 5579, 5558, 5240, 5195, 5117, 4815, 3587 and 3467.

For the reasons stated the claim is without merit and should be denied.

OPINION OF BOARD: This claim arises on behalf of Claimant, Sam Claridy, who was allowed to work only three days during the first week on his new position at Bowden Yard. Claimant was previously regularly assigned to a position at New Smyrna Beach. Rest days at the old position were designated as Thursdays and Fridays. After working Saturday and Sunday, July 30, and July 31, 1960 respectively at the old position at New Smyrna Beach, Claimant exercised seniority rights to a position at Bowden Yard, with rest days designated as Saturday and Sunday. Claimant commenced work at such new position on Monday, August 1, 1960, and worked Monday, Tuesday and Wednesday of that week. However, Roadmaster Heaton advised him that he could only work the first three days of the week beginning August 1, 1960 because he had previously worked 2 days at his old position. Roadmaster Heaton was of the opinion that this constituted a 40 hour week and any work beyond this time would have to be compensated at time and one-half. It clearly appears from the record that this is the only reason that Claimant was not allowed to work the two days in question.

Roadmaster Heaton erred in interpreting the Agreement between these parties. Rule 18 (c) does provide for payment of time and one-half for all work in excess of 40 hours per week. However, an exception, clearly applicable to this case provides as follows:

". . . except where such work is performed by an employe due to moving from one assignment to another. . . ."

The above exception clearly provides that Claimant would not be paid at the overtime rate if he had been allowed to work the two days in question. Therefore, this erroneous reason being the only one given for refusing to allow him to work the two days in question, the claim must be sustained.

The question was raised, rather belatedly, that there being no guaranteed 40 hour work week, the Carrier is not liable for blanking the position the two days in question. However, it is the opinion of this Board, as stated above, that the only reason for refusing to allow Claimant to work the two days in question was the Roadmasters misconception with regard to overtime pay. This being so, Carrier's right to blank the position for some other reason is not decided herein. The question of whether or not there is a guaranteed 40 hour work week is not necessary to this decision and is therefore not decided.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1964.