

Award No. 14945
Docket No. CL-15777

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5820) that:

(1) Carrier violated the Clerks' Agreement when it failed and refused to allow the employees called to work on June 15, 1964 compensation as provided in the rules.

(2) Carrier shall now compensate claimants the difference between amount paid and eight (8) hours' pay at pro rata rate for June 15, 1964, as follows:

H. A. Sumrall	4 hours pro rata rate
Robert Collier	4 hours pro rata rate
W. G. Itson	4 hours pro rata rate
H. G. Hogan	4 hours pro rata rate
J. F. Felder	4 hours, 30 minutes pro rata rate
D. A. Triplett	5 hours, 30 minutes pro rata rate
P. Laurel	5 hours, 15 minutes pro rata rate
J. K. Hartsell	5 hours, 15 minutes pro rata rate

(3) Carrier shall now compensate claimants the difference between amount paid and eight (8) hours' pay at pro rata rate plus actual time worked outside their regular work periods, at time and one-half as follows:

W. H. Hopper	1 hour, 45 minutes pro rata rate 3 hours, 30 minutes time and one-half rate
W. E. Wenzel	4 hours pro rata rate 2 hours, 15 minutes time and one-half rate

EMPLOYEES' STATEMENT OF FACTS: On June 15, 1964, a Trainmen's strike was in progress and claimants were unable to reach their work loca-

J. K. Hartsell	Caller's Office	San Antonio	5 hr 15 min
H. H. Hopper	Yard Office	San Antonio	1 hr 45 min pro rata and 3 hr 30 min overtime
W. E. Wenzel	Yard Office	San Antonio	4 hr 00 min pro rata and 2 hr 15 min overtime

Following is data pertinent to this dispute:

H. A. Sumrall	worked 8:30 PM-11:59 PM	paid 3 hr 30 min
Robert Collier	worked 8:30 PM-11:59 PM	paid 3 hr 30 min
W. G. Itson	worked 8:30 PM-11:59 PM	paid 3 hr 30 min
E. G. Hogan	worked 8:30 PM-11:59 PM	paid 3 hr 30 min
J. F. Felder		paid 3 hr 30 min
D. A. Triplett		paid 2 hr 30 min
P. Laurel	worked 8:15 PM-11:00 PM	paid 2 hr 45 min
J. K. Hartsell	worked 8:15 PM-11:00 PM	paid 2 hr 45 min
H. H. Hopper	worked 8:15 PM- 2:30 AM	paid 6 hr 15 min
W. E. Wenzel	worked 8:15 PM-12:15 AM	paid 4 hr 00 min

The only claimants who performed service outside their regular assigned hours were H. H. Hopper (11:00 P. M. to 2:30 A. M.) and W. E. Wenzel (10:00 P. M. to 12:15 A. M.).

It is our understanding that these employees did not report for work at their usual starting time on June 15, 1964 because the trainmen were on strike. They were called in later in the evening, but did not perform eight hours of service on this date. By their own election not to report for work at the usual time they performed only the amounts of work shown as paid opposite their names in the second paragraph above.

There is no rule or agreement provision which requires payment to an employee for time not worked because of his own withdrawal from service. The agreement has not been violated.

Claims are without merit, and are respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: Claimants failed to report to work on their assigned positions on June 15, 1964 at the assigned starting times thereof because they would not cross a picket line established by another Organization during a work stoppage on the Carrier's property. Upon being notified by Carrier that the picket lines had been removed, Claimants reported for work for varying amounts of time set forth in the Statement of Claim and were allowed compensation for actual time worked at the straight time rate of pay.

Petitioner contends that all Claimants are entitled to at least eight hours' pay at the straight time rate and, further, that two Claimants, who were

required to work beyond their normal quitting time, are entitled to time and one-half for the periods of time worked beyond their scheduled working periods.

The pertinent provisions of the Agreement between the parties are as follows:

"RULE 37.

DAY'S WORK, WORK WEEK, AND OVERTIME

(a-1) Day's Work. Except as otherwise provided in this rule, eight (8) consecutive hours or less, exclusive of the meal period, shall constitute a day's work for which eight (8) hours' pay will be allowed.

(a-2) Hourly rated employees who report for work will be paid a minimum of four (4) hours' pay at pro rata rates. If held on duty more than four (4) hours after starting time, eight (8) hours' pay shall be allowed. This paragraph shall not operate to reduce the number of full time positions now in existence."

"RULE 43.

NOTIFIED OR CALLED

(a) Except as provided in Paragraph (b) of this rule, employees notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis."

"RULE 48.

BASIS OF PAY AND MAINTENANCE OF EARNINGS

(a) Employees covered by Groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

Carrier contends that Claimants' refusal to cross the picket line was voluntary, and that employees may not recover time lost through their own actions. Therefore, that the Claim must be denied in its entirety. Carrier objects to certain documents attached to Petitioner's Reply to Carrier's Submission to the Board because statements contained therein were not a part of the handling of the dispute on the property.

We find that such statements (Petitioner's Exhibit R-1) are not properly before us, as their submission does not meet the procedural requirements set forth in our Circular No. 1. Such exhibits should have been submitted on the property and attached to Employees' initial Submission. Awards 12903 and 13818.

The record supports Carrier's contention that the Claimants voluntarily refused to cross the picket line and only reported to their regular assignments after Carrier notified them that the picket line had been withdrawn. Prior decisions of this Board have held that basic day rules are inapplicable in situations where Claimants voluntarily absent themselves from work. Awards 5853 and 11102. Accordingly, we will deny the claim insofar as it demands payment for the difference between the amount paid to Claimants and eight (8) hours' pay at the pro rata rate for June 15, 1964.

Two Claimants were required to work outside their regular work periods following the expiration of their regular work assignments. The language of the Agreement is clear and unequivocal concerning the performance of work after the regular work period. Carrier elected to have said Claimants continue working beyond their regular work periods and the provisions contained in Rule 43 (a) are applicable to the respective periods of 3 hours, 30 minutes and 2 hours, 15 minutes during which Claimants Hopper and Wenzel actually worked outside their regular work periods. Part (3) of the Claim as it pertains to actual time worked outside of the regular work periods by Claimants Hopper and Wenzel must be sustained, and the two Claimants shall be paid the difference between the pro rata rate which was given and the time and one-half rate required by the Agreement. Award 1013, Fourth Division.

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 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 Agreement was violated.

AWARD

Part (1) of the Claim is sustained.

Part (2) of the Claim is denied.

Part (3) of the Claim is sustained as modified in accordance with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1966.

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