



Award No. 18793

Docket No. MW-19127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WESTERN MARYLAND RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on February 26, 1969 between the hours of 2:00 A. M. and 3:00 A. M., it called members of the section gangs at Maryland Junction and at McCooles, Maryland but failed and refused to compensate them therefor. (System File BMWE Case No. W-100)

(2) Messrs. E. Bennett, R. D. Long, E. H. Watring, H. S. Bennett, T. H. Steele, R. D. Chaney, A. E. Bray, M. C. Mallow, C. E. Mayhew, A. L. Wilmoth, E. R. Iser, G. L. Mayles, H. J. Metcalf, J. O. White, H. D. Flanagan, E. M. Durst and A. R. Carr each be allowed two (2) hours and forty (40) minutes pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to either the section gang headquartered at Maryland Junction or the section gang headquartered at McCooles, Maryland. They were regularly scheduled to begin work at 7:00 A. M. each work day.

A derailment which occurred at Rocket Center, West Virginia required the services of the aforementioned section gangs. On February 26, 1969, the Carrier called the claimants between 2:00 A. M. and 3:00 A. M. and instructed them to report for duty at 6:00 A. M. that morning instead of their regular starting time. The Carrier compensated them for the overtime service they performed between 6:00 A. M. and 7:00 A. M. but failed and refused to compensate them for the overtime service they performed between 2:00 A. M. and 3:00 A. M. The claimants were each entitled to a call of two (2) hours and forty (40) minutes at their respective time and one-half rates for such overtime service performed outside of and not continuous with their regular work period. Compensation for such service is controlled by the clear and unambiguous provisions of Rule 29 which reads:

"CALLS

For time worked before or after but not continuous with the regular work period a minimum payment of two hours and forty minutes at time and one-half shall be allowed."

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 16, 1945, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The 17 claimants are regularly assigned to track section gangs with starting time at 7:00 A. M., Monday through Friday. Nine of them are assigned with headquarters at Maryland Junction (Cumberland), Maryland, and eight with headquarters at McCoole, Maryland.

At 11:02 P. M., February 25, 1969, there was a derailment of 18 cars at Rocket Center, West Virginia, causing extensive equipment and track damage. Wreck train outfits were dispatched from Cumberland, Maryland and Hagerstown, Maryland, arriving at the scene of the derailment at about 7:25 A. M., February 26, 1969. The claimant sectionmen were called by their Foreman to report for duty one hour early, 6:00 A. M. instead of 7:00 A. M., on Wednesday, February 26th to work at the derailment. They were paid at the overtime rate for the one hour between 6:00 A. M. and 7:00 A. M., and continued work uninterruptedly through the regular hours of their assignment.

OPINION OF BOARD: The seventeen (17) Claimants are regularly assigned to track section gangs with starting time at 7:00 A. M., Monday through Friday. Nine (9) of them are assigned with headquarters at Maryland Junction (Cumberland), Maryland, and eight (8) with headquarters at McColle, Maryland.

At 11:02 P. M., February 25, 1969, there was a derailment of 18 cars at Rocket Center, West Virginia, causing extensive equipment and track damage. Wreck train outfits were dispatched from Cumberland, Maryland and Hagerstown, Maryland, arriving at the scene of the derailment at about 7:25 A. M., February 26, 1969. Between 2:00 A. M. and 3:00 A. M. on February 26, 1969, the Claimant sectionmen were notified by telephone by their Foreman to report for duty one (1) hour earlier — 6:00 A. M. — instead of 7:00 A. M. on Wednesday, February 26 to work at the derailment. They were paid at the overtime rate for the one hour between 6:00 A. M. and 7:00 A. M., and continued work uninterruptedly through the regular hours of their assignment.

The question at issue is whether the Claimants who were notified by telephone between 2:00 A. M. and 3:00 A. M. to report early for work should receive an additional two (2) hours and forty (40) minutes at time and one-half rate under Rule 29, which reads:

“Rule 29 — CALLS — provides:

“For time worked before or after but not continuous with the regular work period a minimum payment of two hours and forty minutes at time and one-half shall be allowed.” (Emphasis added)

It is the opinion of this Board that Rule 29 refers to time worked and does not provide payment to employes at the time they were notified to report for work. Therefore, the claim is denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.