

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19676
Docket Number TE-19769

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
((formerly **Transportation-Communication** Division, **BRAC**)
((Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Corn-
munication Division, BRAC, on the Maine Central Railroad
Company, T-C 5852, that:

Carrier violated Article 10, Paragraph **(h)** when they failed to prop-
erly compensate Mr. K. I. **Strout** time and one-half rates for the following
days: Sunday, March **7th**, Friday, March **12th**, Saturday, March 13th and Thurs-
day, March **18th**, 1971, in accordance with the January **1st**, 1951 Agreement.
Carrier shall be required to compensate claimant at the pro rata rate.

OPINION OF BOARD: From the record before us it appears that notwithstanding
numerous decisions of this Board, and decisions of the 40
Hour Week Committee, the parties, for a period of over twenty years, applied
Article 10 of their Agreement in a manner differing from the accepted **interpre-**
tation. Until recently, for unknown reasons, this different practice existed
without dispute and did not generate claims or complaints for literal **compliance**
with the terms of Article 10. In 1970 the claims were filed by the Organiza-
tion seeking a correct application of Article 10. These claims resulted in **a**
conference on June 24, 1971 which conference resulted in an understanding and
agreement which provided:

"This will confirm our understanding and agreement reached in
conference today in relation to Letter Agreement with former
General Chairman Chandler dated November 16, 1964.

As agreed, effective July 1, 1971, a spare hployee on the
Maine Central Railroad Company covered by the Agreement be-
tween the Maine Central Railroad and Portland Terminal **Com-**
panies and **Transportation-Communication** Division **BRAC -**

who has covered a regular assignment for the
full work week of five (5) days or who has,
worked the assignment less than **five** (5) days
but is to continue on the assignment after the
rest days, will take the rest days of the regu-
lar assignment. However, if a Spare Telegrapher

"covers a **regular assignment** less than the full work week of five (5) days and is released **at** the end of the work week, he will not be required to take the rest days of the regular assignment. He will be permitted to mark up on the Spare Board.

This is the same interpretation which has been in effect on the Portland Terminal Company since November 16, 1964 and will become uniform on both the Maine Central Railroad and Portland Terminal Companies."

The two claims which generated the above understanding and agreement were, by agreement, withdrawn. Upon **consummation** of the above-quoted June 24, 1971 agreement, the instant claim which involves dates prior to July 1, 1971 was not before Carrier's highest officer and was not withdrawn but was subsequently processed to this Board. The instant claim seeks payment identical to the method of payment the parties agreed would be followed "effective July 1, 1971". In our judgment for us to sustain the claim we would have to make the June 24, 1971 Agreement retroactive to Sunday March 7, 1971 - an act the parties themselves were unwilling to do. The fact of the matter is they made the June 24, 1971 Agreement and Understanding post-effective on July 1, 1971.

Accordingly, and under the particular circumstances involved in this dispute, the claim will be 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 **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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.