

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20046
Docket Number CL-20177

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, **Airline** and Steamship Clerks,
(Freight Handlers, Empress and Station **Employees**

PARTIES TO DISPUTE: (

(Chicago & Illinois Midland Railway Company

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

1. a-Carrier violated the Agreement on March 6 and 13, 1972, when it failed to compensate Mr. W. J. Hughes for eight (8) hours pro rata rate of his assignment as Laborer at Havana, Illinois.

b-Carrier shall be required to compensate Mr. Hughes for eight hours at the pro rata rate of his regular position, **3:30** P.M. to 12 Midnight, less the amount received, for March 6 and 13, 1972.

2. a-Carrier violated the Agreement on March 6 and 13, 1972, when it failed to compensate Mr. W.J. Hughes for eight (8) hours at the time and one-half rate of the Deck Hand's position 7:00 P.M. to **3:30** A.M.

b-Carrier shall be required to compensate Mr. Hughes for eight (8) hours at the time and one-half rate of the Deck Hand's position, less the amount received, for March 6 and 13, 1972.

3. a-Carrier violated the Agreement on the 13th day of March 1972, when it suspended Mr. Hughes from working his position as Laborer at Havana for the sole purpose of depriving other available employees of overtime.

b-Carrier shall be required to compensate the senior available qualified employee off duty between the hours of 7:00 P.M. and **3:30** A.M. on March 13, 1972 for eight (8) hours at time and one-half rate of the Deck Hand's position.

OPINION OF BOARD: **In** their earlier stage these claims were submitted to **two** Divisions of the National Railroad Adjustment Board, the Fourth and the Third Divisions, and, in consequence, a problem of dual jurisdiction resulted. However, after consideration of Carrier's jurisdictional challenge in Fourth Division Docket No, 2932, the Fourth Division dismissed the claims without prejudice. See Fourth Division Award No. 2867 and 2963 (Docket No. 2932). Accordingly, the claims are now properly and exclusively vested in the Third Division for adjudication.

The alleged facts giving rise to the dispute occurred on March 6 and 13, 1972, when Carrier required Laborer Hughes to suspend work at Havana, Illinois during his regularly assigned hours to fill a vacation relief assignment of the Deck Hand position at Havana. The foregoing, and subsequent handling on the property, is alleged by Petitioner to constitute the following violations by Carrier: (1) Violation of Time Limits; (2) violation of the rule prohibiting **suspensicn** of work during regular hours to absorb overtime (Rule 47); (3) violation of the seniority provisions (Article III) and the overtime and calls provisions (Article VI) of the Agreement, effective February 1, 1938, as amended April 1, 1953; and (4) violation of the National Vacation Agreement. Carrier asserts that its actions were proper under all applicable agreements and that the claim should be dismissed or denied. However, despite the Carrier's general denial, the record contains an admission by Carrier that it under-paid Claimant Hughes by \$15.13 for services performed on March 6 and 13, 1972.

Because of the state **of** the record, which we shall elaborate upon later, we shall deal with only two facets of the dispute. First, we would expect the Carrier to pay Claimant Hughes the above-mentioned sum of \$15.13. Second, we shall rule against Petitioner's contention concerning Carrier's violation of time limits. The letter on which the time limit contention is based, the May 4, 1972 letter of Superintendent Tippey, did make an offer of partial payment of the Hughes claim; however, this offer followed a statement concerning lack of rules support for the claims "as presented". Thus, the letter in its entirety, constituted a denial of the claims within the applicable time limits.

With respect to the remainder of the issues involved, or which may be involved in this dispute, we regrettably have concluded that these issues will have to be determined on another day and with a different record. The record here is incomplete **in** some areas and in others, unreconciled conflicts are presented. The Submissions of both parties fail to present adequately the significance of the handling on the property, and fail to give a coherent statement of the theories relied upon. A multiplicity of violations is alleged by Petitioner, but there is no explanation of how so many violations could result from the relatively simple set of alleged facts. Similarly, there is no positive presentation by Carrier, for the purpose of showing that the facts did not constitute violations. In short, the record presents a picture of such confusion that it simply is not feasible to screen out the genuine controversy from the larger body of incomplete and unreconciled statements. Consequently, except for the time limits and underpayment matters mentioned above, we shall dismiss the claim without prejudice.

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; end

There was no violation of the Time Limits by Carrier.

A W A R D

Except as stated in the Opinion in respect to the \$15.13 underpayment to Claimant Hughes, the Claim is dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1973.