

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20531**

Docket Number MW-20561

**Irwin M. Lieberman**, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(**St.** Louis-San Francisco Railway Company

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

(1) The **members** of B&B Gang No. 3 were not properly paid for the work performed during **overtime** hours on August 16, 17 and 18, 1972. (System File A-9420/D-7019).

(2) The members of B&B Gang No. 3 were not permitted to work their scheduled assigned hours **on** August 16, 17, and 18, 1972 in violation of the Agreement.

(3) The members of B&B Gang No. 3 now be allowed pay as follows:

August 16 - **8:30** P.M. to 5:00 **A.M.** at their respective straight time rates: 5:00 A.M. to 1:00 P.M. at their respective **time** and one-half rates: 1:00 P.M. to **8:30** P.M. at their respective double time rates.

August 17 - **8:30** P.M. to 5:00 **A.M.** at their respective straight time rates: 7:00 A.M. to **6:30** P.M. **at their** respective **time** and one-half rates.

August 18 - **8:30** P.M. to 5:00 A.M. at their respective straight time rates: 7:00 A.M. to 7:00 P.M. at their respective time and one-half rates.

OPINION OF BOARD: Claimants, all members of B&B Gang No. 3, effective August 14, 1972, had regular work hours of **8:30** P.M. to 5:00 A.M. with a **meal** period of **12:30** A.M. to 1:00 A.M. On the **claim** dates, August 16, 17 and 18, these **employees** were required to work on an emergency basis to repair a burned out bridge on the main line. **Their** work on the days in question included work outside of their regularly assigned hours.

The issue in this case is **whether** or not Claimants were paid properly on the three days of emergency **work** specified in the claim. Pertinent rules cited by Petitioner are as follows:

"**ARTICLE 5.** Hours of Service, Overtime and Calls

\* \* \* x x \* \*

"Rule 7. Except as otherwise provided in these Rules, time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be **computed** on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period, computed from starting **time** of the **employee's** regular shift. **Employees** required to work continuously from one regular work period into another in an emergency, shall receive time and one-half for time worked during the regular work period until relieved from such emergency work, and pro rata rate for the remainder of the time worked during the regular eight-hour **work** period.

In the application of this **Rule**, for new **employees** temporarily brought into the service in emergencies, the starting time of such **employees** will be considered as of the time that they **commence** work or are **required** to report."

"Rule 19. The starting time of work period for regular assigned service shall be designated by the supervisory officer, and will not be changed without first giving the **employees** affected thirty-six hours' notice.

"Rule 28. **Employees** will not be required to suspend work, after starting any daily assigned work period, for the purpose of absorbing overtime."

Carrier claims that **Rule** 31 of Article 5 is controlling. Pertinent provisions of that rule read:

"Rule 31. **Employees** in temporary or emergency **service**, except as provided in Rule 24, required by the direction of the management to leave their home station, will be allowed actual time for traveling or waiting during the regular working hours. All hours worked will be paid for in accordance with practice at home station. Travel or waiting time during the recognized overtime hours at home station will be paid for at the pro rata rate.

"If during the time **on** the road a man is relieved from duty and is permitted to go to bed for five or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight hours each calendar day, **when** such irregular service prevents the **employee from** making his regular daily hours at home station. Where meals and lodging are not provided by the railway, actual necessary expenses will be allowed."

We do not agree with Carrier's contention that Rule 31 is applicable to the facts of this dispute: that rule applies only to temporary or emergency **service** in which **employees are** required to leave their **home** station, which was **not** the case herein.

We are concerned about the very basis of this dispute as presented by the parties, since the Carrier admits **in** its submission that the **employees** were not paid properly **for** their service on the dates in question. If **is** clear that the employees worked long **and** arduous hours at the behest of the Carrier to correct the emergency situation; at the very least Carrier should have made an effort to compensate these **employees** properly (which by its **own** admission it did **not**) without the **long** and **burdensome** procedure of resolving the issue through this Board. This entire matter should have been resolved by the parties **on** the property.

It is well established that the work day for any **employee** is the twenty four hour period **beginning** with his regular starting time. With this in mind, **Rule 7** must be applied to determine the appropriate **compensation** for the **Claimants**. It should be noted that Award 20460 is almost directly in point to the issues in this dispute. Though we agree with the position taken by Petitioner on the basic **issue**, we **find that** the argument with respect to the double time **payments** is inaccurate; the double time should apply only after sixteen hours of actual continuous work in the twenty four hour period.

Although there is no disagreement as to the hours worked by **Claimants on** the dates in question, **from** the record before us it is almost **impossible** to determine how much each **Claimant** was paid and therefore to determine the appropriate compensation **owing** each one. The compensatory portion of the Claim will, therefore be remanded to the parties to attempt to arrive at a settlement consistent with the foregoing **comments**. If satisfactory settlements **cannot** be arrived at with respect to any particular **Claimant** or Claimants within sixty days from the date of this Award, any remaining unsettled question may be returned to the Board jointly or **ex parte** by either side.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion; Compensatory portion of Claim is remanded to the parties in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of **Third** Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1974.