

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21027
Docket Number MW-21002

Francis X. Quinn, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Chicago, Rock Island and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it paid Foreman M. A. Robertson and **Trackmen J. C. Juarez and K. E. Staley** at their respective straight-time rates instead of their respective time and one-half rates for one of the 10 - 1/2 hours each worked on Sunday, September 23, 1973 (System File L-126-1466/10-P-492).

(2) The Carrier further violated the Agreement when it paid Foreman **E. L. Griffith** and **Trackmen M. M. Watson, M.F. Preuss** and G. R. Burgess at their respective straight-time rates instead of their respective time and one-half rates for one of the 9 - 1/2 hours each worked on Saturday, September 29, 1973 (System File L-126-1464/10-P-491).

(3) Each of the claimants named in (1) and (2) above now be allowed one hour of additional pay at their respective half-time rates.

OPINION OF BOARD: A reading of the record shows there is no dispute **as** the facts from which this case **arose**. This dispute **stems** from Carrier's application of the Rest Day Rule of the collective bargaining Agreement.

Carrier's basic contention is that Rule 23 - Meal Period - is applicable regardless of the issue arising on a Rest Day under Rule 25.

The Organization's contention correctly stated that Rule 23 has no applicability to work arising under Rule 25. **Rule** 25 provides the proper payment accruing to **employees who** are required to work on their assigned rest days and specified holidays. Furthermore, a rest day or a holiday is an unassigned work day in which there are no regularly established hours **of service** or a specific assignment of a meal period as one finds in a regularly assigned day and work week. An **employee** who may be called out to perform service under Rule 25 is **assured** of payment of two hours and forty minutes at his respective overtime rate of pay, whether that amount of his time is utilized or not. In the event his service is used for a period longer than the minimum specified he is then compensated on a minute basis for the full time worked.

We must look to the Parties' **intention**, if a meal period becomes involved in Rest Day Service. The interpretation to Rule 23 provides that employes required to render overtime service shall be accorded meal periods corresponding as nearly as practicable to their **normal** meal period without deduction in pay or termination of continuous service.

Under all conditions and rules here present, there should be no question but that Claimants are entitled to pay at their respective time and one-half rates for all of the hours they worked on their respective rest days.

Carrier concedes that members of the Gang ate while they worked and it was a rest day for the Gang.

Carrier contends that if the meal **is** not afforded within the allowed or agreed time **limit** and is worked, the meal period will be paid for at **pro-rata** rate.

However, there is no agreed to time limit or meal period on a rest day. It is conceded that the Gangs were assigned to a Monday through Friday **work** week with daily hours of **7:30** A.M. to **4:30** P.M., exclusive of a one **(1)** hour meal period from 12 Noon to 1 P.M., with Saturdays and Sundays as rest days. **Rest** days are unassigned days in which no regular hours are scheduled or to be worked unless the employes are specifically called for that day.

It is reasonable and logical that if there are no assigned **hours** for rest days **there** can be no assigned meal period.

Carrier's argument lacks a solid rationale that employes called for Rest Day service at the time and one-half rate be **compensated** for one hour of the total time at the pro rata rate for work performed.

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

Therefore, we **must** sustain the claim.

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Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of March 1976.