

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21817
Docket Number MW-21843

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(**Elgin, Joliet** and Eastern Railway Company

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

(1) The Agreement was violated when the Carrier compensated **Trackmen** Carlos Velasquez, John Pappas, David **Rocha**, Robert **Lambert, Jr.** and Machine Operator Jack D. Wages at their respective straight-time **rates** instead of at their respective **overtime rates** for the **services** each performed from **7:30** A.M. to 4:00 P.M. on April 9, 1975 (System File **TG-5-75/VM-6-75**).

(2) Each of the **employees** named in Part (1) hereof shall now be paid the difference between what they should have been paid at their respective overtime rates and what they were paid at their respective straight-time rates for services each rendered from **7:30** A.M. to 4:00 P.M. on April 9, 1975.

OPINION OF BOARD: This Board has examined the facts and circumstances attendant to the **VM-2-72** settlement as set forth in carrier's letter of November **13**, 1972 to the then Brotherhood's General Chairman and while mindful of the aforesaid **document's** presumptive merits finds that the vehement denials regarding what carrier calls the interpretative disposition of Rule **28(a)** now Rule **51(a)** are too ambiguous to conclude unequivocally that this was a **mutually** acceptable agreement.

Moreover while cognizant of previous **National** Railroad Adjustment Board awards construing silence as **acquiescence** the claimants' **unanimous** and consistent disclaimers of this understanding as well as the apparent necessity given the significance of this change for a jointly authored agreement, encompassing the agreed upon **terms** and conditions warrants this determination.

Recognizing that the specific language in Rule 53(a) addresses overtime factual situations distinguishable from the overtime purposes of Rule **51(a)**, particularly by Rule 53(a) emphasis on work calls four (4) hours or more in advance of the regular work period, rather than continuously from the prior regular work period and **permitting** overtime

termination at ~~the~~ time the **employee** is relieved from the service for which called, the facts in the instant case indicate continuous employment from the time claimants completed their regular work day on April 8, 1975 at **4:30** p.m. until the completion of their next regular work assignment on April 9, 1975 at **4:30** p.m.

Since this Board has found the circumstances surrounding the November **13**, 1972 letter too ambiguous to construe this **communication** as the agreed upon modality of Rule **51(a)**'s future application, then Third Division award 19390, defining the operational meaning of this rule becomes pertinent. Referee Cole held therein that Rule **51(a)** (then 28(a)) "is directed toward rates of pay when **employees** are engaged in continuous service until relieved and does not delineate the type of work."

Accordingly, applying this definition to the specifics of this case, we find that claimants worked continuously from one regular work period to and throughout their next regular work period, that is from **7:30** a.m. on April 8, 1975 until **4:30** p.m. on April 9, 1975. They were not relieved as averred by carrier.

If clarification and finality of the appropriate meaning and application of Rules 51(a) and 53(a) are desired by the Parties, then a collectively bargained **memorandum** detailing such terms and conditions is the required route.

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

The agreement was violated.

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Claims ~~sustained~~.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1977.