

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21885  
Docket Number MW-21424

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Texas City Terminal Railway Company

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

(1) The Agreement was Violated when the Carrier failed and refused to **compensate Trackmen** Ciriaco G. Nieto, **Epifanio** Guardiola, Florencio F. Vasquez and **Javier** I. Longoria for standby service rendered by each **from 1:00 PM to 3:20 PM** on November 17, 1974. (File TCT-2)

(2) **Each** of the above-named **employees** now be allowed 2 hours and 20 **minutes' pay** at their **time** and one-half rate.

OPINION OF BOARD: On the claim date, a rest day, each of the Claimants was called at **7:00 a.m.** to work a derailment. They worked continuously until 1:00 p.m. (except for lunch break).

According to the time claim filed by one of the **Claimants:**

"Track Foreman told these man to go **home** and wait for him to call them back to work as they were expecting to get the Hook Truck to rerail **some** cars which were on **[sic]** ground. Track Foreman told his men not to leave their homes and **wait** for his call..."

*Claimants* were called and reported at **3:20 p.m.** They worked until **6:00 p.m.** and were released. **They** received 8 hours **40 minutes pay.** This is a claim for pay **from 1:00 p.m. to 3:20 p.m.**

Carrier asserts that the Claimants were released from work at **1:00 p.m.** and told that if a rented wrecker truck was available and used they would be called again. There is no statement in the record, however, by the Track **Foreman** himself as to what he **told the Claimants.** Under the circumstances, we hold the **Claimant's statement** to be unrefuted.

part: **Rule 1** of Article XVII of the **agreement provides** in pertinent

"Time worked or held on duty on rest **days, and** the following holidays...**shall** be paid for at the rate of **time** and one-half, with a minimum of two (2) hours and forty (40) minutes for two (2) hours work or less at time and one-half rate as provided for in **Rule 1** of Article XIX."

In Second **Division** Award No. **3955** the Board had occasion to consider the meaning of the term "time held on duty." The **Board** said:

"On the otherhand, the term '**time** held on duty' ordinarily refers to **time** spent by an employe in the interest of the **employer** and his business, even though part of the **time** may be spent in idleness, provided the employe is appreciably restricted in his movements or otherwise subject to the employer's control during such time. See: **Missouri, Kansas & Texas Railway Company of Texas v. United States, 231 U.S. 112, 119; 34 S. Ct. 26, 217 (1913).** However, if an **employe** who is on **call** or standby is not confined to his **home** or to any particular place but **may** come and go as he pleases, provided he leaves a message or telephone number where he can be reached, the time so spent is not usually regarded as 'time held on duty'."  
(**Emphasis** added).

Applying the principle enunciated in Award No. **3955** to the unrefuted statement in this record that Claimants were sent home and instructed to stay there until called, the Board shall sustain the claim.

**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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

A W A R D

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 January **1978**.