NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21917

THIRD DIVISION Docket Number MN-21795

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Galveston, Houston and Henderson Railroad Company

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

(1) The Agreement was violated when the Carrier required Messrs. A. L. Lopes, V. P. Villarreal, R. G. Leal and J. P. Fuentes to perform service during overtime hours on various dates in May, June, July, August and September, 1975 and refused to allow them any compensation therefor (System Files G-113, G-139/29 MW-1).

(2) The Carrier shall now allow the claimants pay at their respective time and one-half rates as indicated below:

Claimant Lopez . . . . . 69.0 hrs.
Claimant Leal . . . . . 67.0 hrs.
Claimant Villarreal.....71.0 hrs.
Claimant Fuentes . . . . . 61.25 hrs.

OPINION OF BOARD: On May 2, 1975 Claimants were assigned as part of a regular Section Gang servicing Carrier's main line some 19 miles from Galveston, Texas. Their regularly assigned starting time was 8:00 A.M. and with a half hour lunch period, quit at 4:30 P.M. On May 2nd Carrier's General Manager, J. M. Bynum visited the work site and was apparently displeased with the lack of productivity and idleness of the group. He berated then and told them, according to Petitioner, to be on the job site at 8:00 A.M. on each assigned work day and to remain there until 4:30 P.M. According to Mr. Bynum, he told them that if they could not in the future Perform their assigned duties he would have them report at the work site at 8:00 A.M. each morning and remain there until 4:30 P.M. each afternoon. Thereafter, according to Claimants, they reported to the assembly point early enough to arrive at their work site, via company vehicle, at 8:00 A.M. and left the work site by company truck at 4:30 P.M. arriving at their headquarters point at some time later than 4:30 P.M. No tine slips were presented until a claim, that herein, was initiaily presented by an Organization officer by letter dated June 24, 1975.

Carrier's initial response denying the Claim (and, inter alia stating that the Gang had not been instructed to work overtime and that the Galveston roundhouse had not been assigned as their assembly point) was dated August 11, 1975. In spite of this response, the Gang continued to work the longer hours and presented the Claim herein through the month of September 1975. Further, according to Carrier's rebuttal submission to this Board, Claims for similar time periods were submitted through the month of December 1975 when Carrier informed the local Organization representative that if the Gang persisted in the unauthorized longer hours, disciplinary action would be initiated. At that time, the longer hours were abandoned. The following provisions of the Agreement have been cited as relevant to this dispute:

"ARTICLE 6. HOURS OF SERVICE

* * *

(c) For regular operations employe's time will start and end at designated assembling points. For the purpose of the foregoing Bridge and Building gang assembling point is League City, Texas. Exception to the foregoing is that when Bridge and Building gang employees are working at any point in excess of eighteen (18) miles from League City, Texas, they will be required to go one way on their own tine in Company furnished vehicles and one way on company time."

"ARTICLE 8. OVERTIME

(a) No overtime will be allowed without authority of a superior officer except in cases of emergency where advance authority cannot be obtained.

(b) Time worked in excess of eight hours shall be paid for, as follows: 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 employe's regular shift. In the application cf this paragraph B to new employes temporarily brought into the service in emergencies, the starting time of such employes will be considered as of the time that they commence work or are required to report."

The record of this dispute is replete with charge and counter-charge as well as with changes of position. The crux of the dispute is whether or not (1) the men were instructed to be at their work site at 8:00 A.M. through 4:30 P.M.; (2) their assembly point was the Galveston Roundhouse; (3) they did in fact maintain the longer hours during the claim period; (4) they were entitled to be paid for the travel time to the work site.

With respect to the first problem, it is evident that the General Manager did tell the Gang something on May 2nd which could at least be construed as an instruction to report to the work site for the longer time period. Carrier has denied that the instruction was given and further stated on the property that the fact of the instruction was immaterial to the dispute. Claimants all state that they were given the specific verbal instructions which they were obliged to follow. There are unrebutted statements in the record that the men used a company vehicle each day and that the General Manager saw them departing at the earlier hour each day. It is our conclusion, therefore, that the Gang was instructed to report for the longer work hours by the General Manager.

Petitioner alleged that the headquarters, or asembly point, of the Gang was the Galveston roundhouse; Carrier (in Mr. Bynum's letter of August 11, 1975) denied that the roundhouse at Galveston had been designated as the Gang's headquarters point; 'it is noted, however, that no other point was indicated by Carrier>, The record indicates that the Gang had traditionally maintained lockers at the roundhouse, secured Carrier vehicle to take them to their daily work site at the roundhouse, maintained their tools at that point and habitually departed from that location. It is concluded that the roundhouse at Galveston was the designated assembly point, since no contrary location has been indicated.

The question of whether or not the Claimants maintained the specified longer hours must be answered in the affirmative since Carrier has not explicitly denied the assertions and documentation submitted by Claimants. It is noted that Carrier has consistently stated: ". . ..if they worked any overtime it was totally contrary to Paragraph (a) of Article 8...." Carrier has indicated that if they indeed worked the hours specified, it "as a purely voluntary act by Claimants for which Carrier has no liabiiity.

With respect to the question of whether Claimants were entitled to be paid for the time spent in travelling to their work site, Carrier vigorously denied their claim. Carrier based its' position that the time in question was not "work" and furthermore relies on Paragraph D of Part II of the Award of Arbitration Board No. 298 which specified that the employes were only entitled to straight time for the period of time in excess of one hour in travelling to the job. Petitioner points out, however, that the interpretation of the Award referred to by Carrier held that the provision in question did not apply to regular employes, as were involved in this dispute.

It is quite clear that Carrier at minimum was aware that the Claimants herein were using Carrier transportation before and following regular work hours. It is also clear, as indicated heretofore, that the roundhouse was the assembly point for the Claimants, as specified in Article 6 (c). Hence it must be concluded that they did indeed perform overtime service daily without the compensation provided in the Agreement.

Carrier points out, quite properly, that the Claim for Mr. Fuentes for May 2, 5, 6, 7, 8, and 9 were not timely presented. Those claims will be dismissed.

The record of this dispute reveals behavior by both parties which is beyond the comprehension of this Board. On the part of Carrier it is difficult to understand why the initial claim filed on June 24 was first answered on August 11th and without any change in the work schedule of Claimants being ordered by Carrier. On the part of the Organization, it is impossible to follow the logic of the Claimants continuing to work the longer hours following receipt of Carrier's response dated August 11th which specifically denied instructing the employes to work any overtime. In view of Carrier's response to Petitioners dated August 11, 1975, the continued overtime activity of Claimants beyond that date must clearly be considered to have been voluntary. Accordingly, based on the entire record and for the reasons indicated above, we shall sustain the claim up through August 11th only (with the exception pertaining to Mr. Fuentes supra).

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

That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.