

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22492  
Docket Number MW-22401

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Chicago, Rock Island and Pacific Railroad Company  
(William M. Gibbons, Trustee)

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

(1) The **Agreement** was violated when Machine Operators R. **Thompson**, C. O. Scott, D. Brown, M. **Hawkinson**, I. M. **Harper**, A. **Anderson**, R. Smith, H. W. **Barch**, M. **Humphrey**, O. S. Whitt, D. W. **Banks**, R. A. **Leeper** and D. Dickson were compensated at their **respective** straight-time rates instead of at **their** respective time and one-half rates for **the 9th and 10th hours** each **worked on** certain dates **during** October **and November**, 1976 [**System Files 11-P-544/L-126-1583 and 11-P-547/L-126-1581/**].

(2) **Each of the** above-named **claimants** **now be allowed the** difference between **what** they should have been paid at **their** respective time and one-half rates **and what they were** paid at **their** respective straight-time rates for the **overtime** service **each rendered** during **the above-mentioned** claim period."

OPINION OF BOARD: Item 7 of a February 19, 1976 Agreement provides for twenty (20) straight eight (8) hour work days at **the** pro rata rate, thus **accumulating** 8 days off to afford the **members of the gangs an opportunity to visit** their families.

In October and November, 1976, the **employees involved** agreed to **work** sixteen (16) straight days of **ten** (10) hours each, **followed** by eight (8) days off. This **arrangement - which was contrary** to the agreement - was not agreed to by **the** Organization.

In reply to Carrier's assertion that the **employees** desired to work **the** longer days, **the** Organization reminds us **that the employees** cannot abrogate or change an agreement, and **that** we lack powers of "equity and justice." See **Award** 20844.

The claim seeks time and one-half for **the** two hours worked **each day over** and above the **normal 8** hours per day. The **employees** received straight time for the two hours par day and **thus**, seek one-half pay per hour for the 9th and 10th hour.

Carrier did not question **the** timeliness of the claim while **the** matter was under consideration on **the** property and **thus**, its attempt to rely on **that** defense in its Submission to **this** Board **is** not appropriate.

There seems to be no question that the **employees** agreed to **the** altered schedule **and** thus, we can readily understand Carrier's contention that **the employees** waived their **complaint and** that additional **payment amounts** to "unjustenrichment." Indeed, it does give us pause to honor these **claims on** behalf of the employees who voluntarily agreed to the violation. But, for us to **invoke** the concepts espoused by the Carrier would require us to apply equitable considerations **(which is** clearly beyond **our authority)** and ignore **the well established** principles which dictate that individual **agreements** do not replace **collectively** bargained agreements. See Award 21048.

There **is** a **contractual basis for premium pay for time worked** in excess of eight hours per day.

**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** wet the dispute involved herein; and

*That the agreement was violated.*

Award Number 2242  
Docket **Number** W-22401

Page 3

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**Claim**sustained.

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

**ATTEST:**

*A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of **August 1979.**