

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24212
Docket Number MW-24113

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Assistant Foremen J. D. Ray and W. J. Homsby and Trackmen J. F. Hilton, M. E. Lee, A. W. Trogdon, W. M. Harrison, W. R. Thomas, J. E. Sims, W. A. Fullwood, W. A. King, D. L. Carter and D. C. Stephens were not permitted to work their regular assignment on April 11, 1979 (System File 37-SCL-79-82).

(2) The Agreement was violated when the Carrier failed to properly compensate the claimants for work performed during overtime hours on April 11 and 12, 1979.

(3) Because of the violation referred to in Part (1) hereof, each of the claimants be allowed four and one-half (4-1/2) hours of pay at their respective straight-time rates.

(4) Because of the violation referred to in Part (2) hereof, each of the Claimants be allowed nineteen (19) hours of pay at their respective half-time rates."

OPINION OF BOARD: This dispute was related to a derailment which occurred late in the evening of April 10, 1979 at Branford, Florida, of major proportions, constituting an emergency. There is no dispute with respect to what transpired.

The Claimants herein were part of a crew located at Waycross, Georgia, with a regular assignment of Monday through Friday with hours of service from 7:30 A.M. to 4:00 P.M. On April 11th, when the crew reported to work at 7:30 A.M., half of the crew were immediately transported to Branford to work on the derailment. The remainder of the crew, the Claimants herein, were instructed to go home and rest and to report back to work at 3:30 P.M. for transportation to the site of the derailment. The Claimants reported back to work at 3:30 P.M. and were transported to the derailment site; they worked at that location until being transported back to their headquarters at Waycross and released at 3:30 A.M. April 12th. Subsequently, on April 12th, the Claimants reported back to work their regular assignment at 7:30 A.M. and worked until 4:00 P.M. on April 12th.

For the work on April 11th and 12th, Claimants were paid as follows:

- (1) April 11 30 minutes, straight time, for time spent in deciding to send them to Branford. Three hours straight time for reporting and not being used at 7:30 A.M.

- (2) April 11 8 hours straight time for work from 3:30 P.M. until 11:30 P.M.
- (3) April 11 Four hours at time and one half for work from 11:30 and 12 P.M. to 3:30 A.M.
- (4) April 12 8 hours straight time for work from 7:30 A.M. to 4:00 P.M.

The relevant rules involved in this dispute provide as follows:

"Rule 19 Section 2. For regular day service, the starting time will not be earlier than 6:00 a.m., and not later than 8:30 a.m. and the assigned hour for starting work will not be changed without first giving the employees affected thirty-six (36) hours' notice.

Section 4. Hourly rated employees required to report for work on a work-day assignment and reporting but not used will be compensated for three (3) hours' time at pro rata rates. ***"

"Rule 27 OVERTIME

Section 1 Time worked following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on the actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift.

Section 2 Time worked continuous with and in advance of the regular eight (8) hour work period: (a) if six (6) hours or less, will be paid at time and one-half rate until the beginning of the regular work period, and then at the straight-time rate during the regular eight (8) hour work period; (b) if in excess of six (6) hours, the time and one-half rate will apply until the double-time rate as provided for in Section 3 of this Rule becomes applicable, or released for eight (8) hours or more. Such release, upon completion of six (6) hours or more actual work, will not constitute a violation of Section 6 of this Rule.

Section 3 For time worked in excess of sixteen (16) hours following the beginning of the employee's regular starting time, the double-time rate will apply until released for at least eight (8) hours or until the beginning of the next regular work period, when time and one-half rate will apply for the following sixteen (16) hours, then double time for the next eight (8) hours."

Petitioner contends that Claimants were improperly compensated for the emergency assignment. First it is pointed out by the Organization that the regularly assigned day was never changed. Further, it is noted that the crew was entitled to time and one-half (under Rule 27, Section 1) for the work which commenced at 4:00 P.M. on April 11 and double time for time after sixteen hours, computed from the starting time of their regular shift. Further, it is argued that they were entitled to time and one-half for working from 7:30 A.M. to 4:00 P.M. on April 12th since they had only four hours of rest and had worked in excess of six hours preceding their regularly scheduled day.

Carrier points out that under the emergency which existed, it had considerable latitude in assignments in order to deal effectively with the situation. Further, Carrier notes that it attempted to conform to the Organization requests during prior emergencies by providing rest and relief time for the crews during this emergency and hence was quite displeased by the Claim herein. Carrier argues that there was absolutely no entitlement, based on the rules, for the compensation embodied in paragraphs one and three of the Organization's Claim. Further, as a principle point, Carrier maintains that the remainder of the claim is unjustified since Claimants did not work during the period prior to 4:00 P.M. on April 11th. According to Carrier, Rule 27 only provides for the premium pay when an employee has performed work during his entire work period and is required to work beyond the normal eight hours.

The Board notes, initially, that but for the emergency, it is doubtful that this Claim would have arisen in view of the long established practices concerning deviations from the normal work day. The Carrier is quite right in its assertions concerning the latitude it properly enjoys during an emergency; however that latitude is not extended to abrogating any of the compensation rights of employees spelled out in the Agreement (see Award 20460).

Carrier's position concerning the Organization's request for additional compensation for the regular work day starting at 7:30 A.M. on April 11th is well taken. Under Rule 19 Section 4 the employees were only entitled to three hours reporting pay for the first eight hours, which they were paid. However, under the provisions of Rule 27, Section 1, Petitioner is correct with regard to the overtime computation: overtime is dependent on work "... following and continuous with the regular eight (8) hour work period ..." and further that the twenty-four hour period is computed from the starting time of the employee's regular shift. Thus, Carrier's argument that the overtime payment is dependent on work performed rather than the scheduled work period, must be rejected (see Award 20531). The conclusion, therefore, must be that Claimants were not properly compensated for the periods of work starting at 4:00 P.M. on April 11 and continuing on April 12th.

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 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

Paragraphs 1 and 3 of the Claim are denied.

Paragraphs 2 and 4 of the Claim are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.