

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24239
Docket Number MN-23757

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco 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 properly compensate the members of Gang 304 for time worked following their regular assigned work period on February 26, 1979 (System File B-1505/D-9895).

(2) As a consequence of the aforesaid violation, Foreman V. L. Kinder be allowed two (2) hours of pay (4:00 P.M. to 6:00 P.M.) at his time and one-half rate and six and one-half (6-1/2) hours of pay (11:30 P.M. to 6:00 A.M.) at his half time rate and Messrs. G. H. Leutzinger, M. Kozma, J. E. DeRousse and T. R. Fallert each be allowed two (2) hours of pay (4:00 P.M. to 6:00 P.M.) at their respective time and one-half rates, eight and one-half (8-1/2) hours of pay (11:30 P.M. to 7:30 A.M.) at their respective half time rates and two and one-half (2-1/2) hours of pay (7:30 A.M. to 10:00 A.M.) at their respective straight time rates."

OPINION OF BOARD: The issue raised in this matter is whether Claimants are entitled to be paid for two hours. This is the period at the end of the normal work day which was 4:00 P.M. until 6:00 P.M. when they reported back to work for the purpose of snow removal work. The Claimants were informed before normal quitting time of the arrangement and were told to report back to work at 6:00 P.M. packed for up to two days away from home.

Claimants were not paid for the period from 4:00 P.M. to 6:00 P.M., and they are, therefore, claiming payment for this time as well as increase in their other payments which would have been increased had they received payment for the two hours in question, because this would have then made their employment continuous from the time that they first started the initial work day.

The question at issue then is whether the Carrier can call the Claimants back to work after a two-hour gap without their being paid for it and, more particularly in this circumstance, where they were instructed to go home and pack in order to be prepared for a two-day stay away from home.

There is no allegation on the part of the Claimants that this procedure was a device calculated to defeat the purpose of the specific language of the Agreement, but rather that a proper interpretation of the Agreement would allow their being paid for this time, that technically they were still on duty because of their instructions to pack for the subsequent trip.

There is a procedural matter raised by the Carrier because the claim was made over sixty days after the date of the service in question; however, this Board is of the opinion there is no basis for a procedural defect in that the

controlling date of thabasis for their grievance is **the** date **upon** which they were notffied that they would **not** be paid for the **time in** question, not *the* work days involved.

The language of the Agreement does not require that **employees** called to perform **overtime** work must be so called immediately after the **end** of their straight **time** or normalwork period. The **most significant** question is whether the request of the supervisor to the employee to get packed for a two-day trip is, in itself, sufficient to consider this period as being in the employ of the Carrier.

A review of the Awards provided by the Organization **does** not reveal any which are **exactly in** point. The **closest ones** are decided on the basis of a standby service waiting for a further call. Even these Awards involve a restriction of the movements of the **employee** even if he is idle. See Award 21885 which cites Award 3955 therein.

Since the **Claimants** herein **were** in no way confined **in** their activities during the two-hour period, we do not **find** the **Awards** applicable. The **Claimants** **were** free to go **home** and pack or not as they chose. If they chose not to go **home**, they ware not subject to discipline. The **time** appears to have been **made** available as a convenience to the Claimants.

For the **reasons** citedherein, **the claims will be denied.**

FINDINGS: The Third Division of the Adjustment hoard, upon the **whole** recbd and all the evidence, finds and holds:

That the parties **waived** oral hearing;

That the Carrier and the **Employees** iolved 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** wer the dispute involved herein; and

That **the Agreement** was not violeted.

A W A R D

Claimdenied.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

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