NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25504
THIRD DIVISION Docket Number CL-25474

Herbert L. Marx. Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway,Airline and Steamship Clerks.
(Freight handlers. Express and Station Employes
(
(Canadian Pacific Limited/States of Maine & Vermont

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9864) that:

1. Carrier violated the Agreement between the parties when, on various dates commencing March 7, 1983, it required employes to report to work for a period of less than eight hours and failed to compensate them for a full eight hour day.

2. Carrier shall, as a result, compensate Messrs. W. Allen, R. C. Chaffee and M. M. Maynard of Newport Yard Office, a full eight hours pay for each and every day in which they were required to work a period of less than eight consecutive hours.

OPINION OF BOARD: The Claimants, in unassigned or furloughed status, were called to work on various dates to supplement the regular work force. They were assigned for less than eight hours a day and were paid only for the hours actually worked.

The Organization claims that the employees should have received eight hours' pay for each of the partial days worked, under the provision of Rule 2, HOURS OF WORK, Section (a), which reads as follows:

> "Except as otherwise provided, eight consecutive hours' service exclusive of meal period shall constitute a day's work."

The Organization argues that this is a "basic day" rule, requiring the payment of eight hours' pay whenever an employee is called to work. The "exceptions" referred to in Rule 2 (a) have no application to a regular work day, according to the Organization.

The Carrier argues that Rule 2 (a) may not be read as a guarantee of any number of pay hours but rather simply prescribes the maximum length of a normal work day.

The Carrier also points to Article 3 (j) of the Work Week Rule which reads: "Guarantees -- Nothing in this rule shall be construed to create a guarantee of any number of hours or days of work where none now exists".

In addition, the Carrier suggests that, since the employees were called to work on an as-and-when needed basis, they can be distinguished from regularly assigned employees and paid on an hour-by-hour basis.

As to the last point, the Board finds nothing in Rule 2 (a) or in any other cited rules which would separate employes called for such assignments from those scheduled on a regular basis. As to Rule 3 (j), this must be read to mean that nothing in the Work Week Rule (Rule 3) itself creates a guarantee. Here, however, the question is whether another rule -- Rule 2 (a) -- creates such guarantee.

As to Rule 2 (a), the Carrier is quite correct that it differs from similar rules in other agreements which read, for example: "Eight consecutive hours, exclusive of meal period, shall constitute a day's work for which eight hours' pay shall be allowed." Nevertheless, Rule 2 (a) has long been interpreted to require the payment of eight hours' pay even when fewer hours are actually worked.

Previous awards of this Division have considered the same language, reaching a conclusion that the wording of Rule 2 (a) does lead to the interpretation set forth by the Organization. Award No. 2589 reads in pertinent part as follows:

> "OPINION OF BOARD: The facts in this case are not in dispute. There are some eight platform employes at the San Luis Obispo Freight Station who are required to report daily at definitely assigned starting times. They are paid on an hourly basis for actual time worked. The claim is for eight hours pay for all employes so assigned. The claim is based on Rule 9, which provides:
>
> Days Work
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> Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.
>
> The Carrier contends that the rules does not guarantee a minimum of eight hours work. The contention is untenable in the face of many decisions of this Board holding that rules, identical in terms, guarantee a minimum of eight hours work to employes who are required to report daily at definitely assigned hours to perform work which arises in the usual course of each day's business. See Awards Nos. 330, 438, 516, 1047, 1127, 1211, 1803. In the Award last cited there is a comprehensive discussion of previous awards, holding that such rules as Rule 9 guarantee a minimum of eight hours work, and the reasons justifying such interpretation of the rule. The interpretation of the rule as laid down in these awards has, we think, effectively become a part of it in all agreements, between the Brotherhood and the carriers, in which it appears."

Award No. 13355 states:

> "Factually speaking, the Claimants in this case were called upon each and every day over a long protracted period of time, as indicated by the dates contained in the claim, a fact which mitigates against the theory of fluctuating work advanced by the respondent. The next question to which we address ourselves is whether or not it can be considered part time work, and if so, what applicable rule of the Agreement governs such work. A careful analysis of this Agreement convinces us that there is no provision either for the use of part time employes or for part time work. The work involved was regular work, to which the employes were entitled by reason of their seniority. Rule 38 of the basic Agreement, quoted infra, is clear, concise, unambiguous, and non-susceptible of misinterpretation. It has been analyzed in the crucible of labor-management relations of this industry innumerable times. We do not think it necessary to refer to the many awards of this Board on the precise language contained in Rule 38, but suffice it to say that the Agreement in this case, specifically Rule 38, was violated and we, accordingly, sustain the claim."

The Rule 38 cited in this Award reads as follows: "Except as provided in Rule 41, eight consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

In the instance here under review, the Board finds no basis to reach a different conclusion.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1985