

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26133

Docket Number MW-25913

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Seaboard System Railroad

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

1. The Carrier violated the Agreement when it used junior trackmen to perform overtime service on April 26, 1983 instead of using Trackman K. B. Page who was senior, available and willing to perform that service [System File C-4(31)-KBP/12-38(83-119) J2].

2. Because of the aforesaid violation, Trackman K. B. Page shall be allowed three and one-half (3 1/2) hours of pay at his time and one-half rate."

OPINION OF BOARD: Claimant, a Trackman, was one of a gang of Employees headquartered in camp cars who elected to work four ten-hour days to give them a three-day weekend since they travel long distances to their homes. The make-up time Rule in effect states in pertinent part:

"Rule 38

Section 1 Weekend Visits Home

Employees stationed in camp cars will be allowed, when in the judgment of Management conditions permit, to make weekend visits to their homes. If employees cannot by using regular train service after completion of work on the last day of the work week, arrive home within a reasonable time and return to their camps on the first day of the succeeding work week in time for regular service, they will be allowed to make up time during the week in order to do this, provided that not more than two (2) hours shall be made up on any one day and at no additional expense to the Company. Free transportation will be furnished over Company lines where service is available, consistent with the regulations of the Company, and any time lost on this account will not be paid for. The total time worked each day must be recorded in the time book on the day worked.

Section 2

All the men in the gang must observe the same hours. The wishes of a majority of the men in the gang (the Foreman included) shall prevail on the question of working make-up time. Any make-up time is subject to the concurrence of the Division Engineer or Engineer of Bridges."

On Tuesday, April 26, 1983, the Foreman decided additional work was needed on a crossing which could not be completed by regular quitting time. The Foreman proposed performing the overtime service as make-up time.

The record indicates Claimant expressed that he would not work beyond ten (10) hours and returned to the camp car at regular quitting time.

Three other junior employees in the gang took it upon themselves to work an additional three and one-half (3 1/2) hours to complete the job. Subsequently, they took an equal amount of time off Thursday afternoon, enabling them to go home early for assigned rest days. Claimant then worked a regular ten (10) hour day on Thursday before going home.

The Organization contends Claimant is entitled to receive compensation of three and one-half (3 1/2) hours of overtime.

The Sections which apply in Rule 27, "overtime" state in pertinent part:

"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 4

Work in excess of 40 straight-time hours in any workweek shall be paid for at one and one-half times the basic straight-time rate except where such work is performed by an employee due to moving from one assignment to another, or to or from an extra or furloughed list, or where days off are being accumulated under Section (g) (3) of Rule 20 of this Agreement...

Section 8

When overtime service is required of part of a gang continuous with, before or after the regular work period, the senior available qualified employees in the rank involved shall have preference to such overtime if they so desire."

Carrier contends there is no basis to pay Claimant any amount, much less the punitive rate of pay, inasmuch as overtime was required to return the road crossing to a safe condition. Since Claimant elected not to work the overtime, Carrier argues he cannot justify his Claim for the time he elected not to work by alleging that to do so would violate Rule 27.

The record clearly shows Claimant was not pressured to perform the overtime nor did he suffer any loss of compensation as a result.

The Board is persuaded that Claimant's proper response should have been to work the overtime; and, if he felt improperly placed the Claimant should have grieved. See Second Division Award No. 8395.

Accordingly, the Claim is denied.

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 over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

