

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10027) that:

1. Carrier violated the Clerks' Rules Agreement when it called Claimant R. C. Leathers to perform service on two (2) separate occasions on his rest day and compensated him for only one (1) rest day call payment for June 9, 1984.
2. Carrier's action is in violation of Rule 26(a) of the Agreement between the parties.
3. Carrier shall now be required to compensate Claimant Leathers for one additional rest day call of five (5) hours twenty (20) minutes at the time and one-half rate for claim date, June 9, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The events precipitating the instant claim are not in dispute. At all times relevant, Claimant was assigned to the position of Telegrapher-Clerk, Job Number 391, at Marshall, Missouri. His assigned hours were 7:00 A.M. to 3:00 P.M., with rest days on Saturday and Sunday.

On Saturday, June 9, 1984, Claimant's assigned rest day, Carrier called him to report for duty. The Claimant reported at 4:35 P.M. and was told to copy and deliver train orders to the EXTRA UP 2904 East. He completed this assignment at 5:25 P.M. and was told by the Carrier's dispatch that he could return home. On the same date, Claimant was again called and reported at 6:15 P.M. Upon arriving at the depot he was told to copy and deliver train orders to the EXTRA 3082 West. He completed this assignment at 6:46 P.M. and was released by the dispatcher.

Claimant filed a request for two "call payments" each for five hours and twenty minutes at the time and one-half rate of pay.

At issue here is the interpretation and application of two rules in the Agreement which provide for overtime, calls, rest day and holiday work rules. They state as follows:

"Rule 26

Rest Day and Holiday Work

(a) Service on Rest Days.

Service rendered by employees on their assigned rest days shall be paid for under the provisions of Rule 25 (f) with a minimum of 5 hours and 20 minutes at the time and one-half rate, unless relieving an employee assigned to such day, in which case they will be paid the rate of the position occupied with a minimum of eight hours at the time and one-half rate.

Rule 25

Overtime and Calls

(f) Employees notified or called to perform work not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis."

The Organization's position is that it is the number of calls the employee receives on his rest days, and not the amount of work performed, which determines what the employee is to be paid. Not surprisingly, Carrier disagrees, and argues that it is the actual work or "service" performed by the Claimant, in this case a total of one hour and twenty-one minutes, that determine the amount of payment. Since in this case the work performed was less than the minimum five hours and twenty minutes provided in Rule 26 (a), Claimant should not be paid twice the minimum amount. Had the work taken longer than five hours and twenty minutes to accomplish or if the work on the rest day was performed at two different times falling outside a five hour and twenty minute time span, the Carrier concedes that the Organization would have a valid argument. In this case, however, where the work was completed in one hour and twenty-one minutes and it was performed within a time span of two hours and eleven minutes, the Carrier contends the claim must be denied.

The Board has reviewed the record in this case as well as the precedent awards cited by the parties. In applying the rules of the Agreement to the facts contained in this record, we are persuaded that the logic and reasoning of Second Division Award 9154 is equally applicable herein. In that case, the Board was called upon to interpret a contract provision similar to that at issue here, one in which employees called or required to report to work were allowed a minimum of four hours for two hours and forty minutes or less. In sustaining the claim, the Board noted:

"The Agreement makes no allowances for combining calls nor did the record contain any facts to support Carrier's statement that it had always combined calls and paid on a continuous basis in past situations like the one here. One must keep in mind that call-in provisions guaranteeing hours of pay have been placed in contracts to assure employees that they will receive a reasonable amount of pay when they are inconvenienced and have to report for work at other than their scheduled time. In the instant case, Claimant was required to report for work twice during a six-hour period. There is no basis in the contract or in labor relation principles to support the contention that he should be paid for only one call."

In this case, we find that when Claimant was called to service from 4:35 P.M. to 5:25 P.M. on June 9, 1984, his assigned rest day, was released from service and then called again to perform service from 6:15 P.M. to 6:46 P.M., he should have been compensated for an additional rest day call as claimed by the Organization.

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 23rd day of June 1988.