

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

On behalf of Mr. J. A. Couser.

CLAIM

(a) Carrier violated the current Signalmen's Agreement, particularly Rule 4-B-2, paragraph (B) when they called Mr. J. A. Couser outside and not continuous with his regular tour of duty.

(b) Carrier should now be required to compensate Mr. Couser one hour and thirty minutes' travel time to Buckeye Yards, Columbus, Ohio to perform overtime, and completing his assignment. Carrier file SD-2505."

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 employes 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 basic facts of this case are set forth as follows: On January 31, 1988, Carrier called Claimant at 5:30 A.M. to go to Buckeye Yard, Columbus, Ohio, and work in place of the regular employee who marked off sick. January 31, 1988, was Claimant's second rest day and he was required to work a 7:00 A.M. to 3:00 P.M. vacancy that day. For the service performed, Claimant was compensated at the time and one-half rate in accordance with Carrier's interpretative application of Rule 4-B-1, but the Organization disputed this application and filed a Claim by letter dated February 8, 1988. It was the

Organization's position that since Claimant was on his rest day and not notified prior to his release from duty as defined in Rule 4-B-2(a), Claimant should be compensated round trip travel time at the overtime rate amounting to a total of three hours in accordance with the requirements of Rule 4-B-2(b). In response Carrier contended by letter dated April 12, 1988 that Rule 4-B-2 was inapplicable since Claimant was called to fill a regular assigned position not governed by this provision. For ready reference, 4-B-1, 4-B-2(a), and 4-B-2(b) are referenced as follows:

"4-B-1. Work performed by an employee on his assigned rest day, or days, shall be paid for at the time and one-half rate. Service performed on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under Rule 4-B-2(b) will not be counted as qualifying service under this paragraph nor will it be paid for under the provisions hereof.

4-B-2. (a) Employees notified prior to release from duty to report at a designated time to perform service outside of and not continuous with regular tour of duty shall be paid at the applicable overtime rate from the time required to report to the time released with a minimum of three (3) hours at the time and one-half rate.

(b) Employees called after release from duty to perform service outside of and not continuous with regular tour of duty shall be paid at the applicable overtime rate from the time called to the time returned to the point at which called or their headquarters with a minimum of three (3) hours at the time and one-half rate."

By letter dated April 18, 1988, the Organization asserted that April 12, 1988 denial was untimely since it was outside the time limits defined in Rule 4-K-1. By letter dated April 21, 1988, Carrier reiterated its position that Claimant was properly compensated for his performed services on January 31, 1988, and took issue with the Organization's assertion that Rule 4-K-1 was violated. Specifically, it observed that the February 8, 1988, initial Claim letter was not received by the Supervisor until February 16, 1988. An on situs discussion was held on June 14, 1988, but said discussion meeting did not resolve the Claim. By letter dated July 20, 1988, Carrier repeated the previous denial positions and again denied the Claim. The Organization by letter dated August 29, 1988 reiterated its procedural and substantive positions and noted that the case would be considered for "possible handling" with the National Railroad Adjustment Board.

In considering the procedural question raised by the Organization, the Board is persuaded under the facts of this case, that since there is no proof when exactly the February 8, 1988 Claim letter was mailed and noting Carrier's position that said letter was not received until February 16, 1988, we will follow our decision in Third Division Award 28204 wherein we denied a time limits Claim. The facts herein are similar to the facts in Award 28204. As such, the instant dispute is properly before us.

As to the merits of the case, we must agree with the Organization's July 24, 1989 letter to the National Railroad Adjustment Board's Executive Secretary that Carrier raised new arguments in its ex parte submission particularly with respect to its (Carrier's) contention that an emergency existed and accordingly, this positional argument is without standing before the Board. A review of the on situs appeals record does not indicate that Carrier was claiming an emergency existed. Further, we find no detailed explanation indicating why Rule 4-B-2 (b) was inapplicable to Claimant's circumstance nor any substantive indications showing that employees covered under the BRS Schedule Agreement were routinely compensated in accordance with Rule 4-B-1. On the other hand, Claimant was called after he was released from duty and performed service outside and not continuous with his regular tour of duty and thus under Rule 4-B-2(b) was entitled to be paid at the applicable overtime rate from the time called to the time returned to his point of call with a minimum of three (3) hours at the time and one-half rate. Rule 2-B-2 (b) is expressed in crystal clear language and absent any detailed substantive showing that it had a particularized narrow application we are compelled to apply as written. Since Claimant was on a rest day on January 31, 1988 and called to perform service outside and not continuous with his regular tour of duty, he is entitled to be compensated at the overtime rate from the time he was called until the time he returned to his point of call at the overtime rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.