

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30242
Docket No. SG-30710
94-3-92-3-502

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Signalmen
(Consolidated Rail Corporation (Conrail))

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

- (a) Carrier violated the current CRC-BRS Agreement of 9-01-81; particularly Rules 5-A-1, 5-A-1(d), 5-A-1(e), and 4-B-1; and other applicable rules.
- (b) Carrier should now be required to compensate Claimant in an amount equal to eight (8) hours' pay at one half (0.5) the rate of Electronic Specialist's rate of \$16.31/hr. and all other benefits which Claimant would have accrued, had the violation not occurred." Carrier File SC-353, GC File RM-2145-52-891. BRS Case No. 8665-CR.

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 employe 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.

At the time of this claim, the Claimant was employed as a Relief Electronic Specialist at the Carrier's Columbus, Ohio, Buckeye Yard. His regular work schedule was first trick (7:00 A.M. to 3:00 P.M.) on Sunday, second trick (3:00 P.M. to 11:00 P.M.) on Monday and Tuesday, third trick (11:00 PM. to 7:00 A.M.) on Wednesday and Thursday, and rest days on Friday and Saturday. On Thursday, December 13, 1990, the Claimant worked his regular assignment and then performed four hours of overtime work continuous with that shift. He went off duty at 11:00 A.M. on Friday, December 14, 1990, and was compensated four hours' pay at the overtime rate for the additional service. On Saturday, December 15, 1990, the Claimant was called to perform service from 7:00 A.M. to 3:00 P.M., for which the Carrier compensated him eight hours' pay at the overtime rate.

The Organization asserts he was entitled to double time for his service on Saturday, asserting he was required to work on both of his rest days. The Organization relies upon Rule 4-B-1 of the Agreement, which provides as follows:

"4-B-1. Work performed by an employee on his assigned rest days, 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."

The Organization argues the Claimant's first rest day began at the conclusion of his regular Thursday assignment, which was at 7:00 A.M. on Friday. His second rest day, according to the Organization, began at 7:00 A.M. on Saturday and ended when he started work at 7:00 A.M. on Sunday. This would afford the Claimant two rest days of twenty-four hours each. Under such a schedule, the Claimant would have performed work on each rest day.

The Carrier, on the other hand, insists the first four hours service was not performed on a rest day, but was continuous with his regular shift. The Carrier asserts the Claimant was compensated for the four hours of overtime on Friday pursuant to Rule 4-A-2, which reads as follows:

"4-A-2(a).Time worked following and continuous with bulletined hours shall be paid on an actual minute basis at the time and one-half rate, with double time paid on the actual minute basis after sixteen (16) hours of work."

Using this Rule, the Carrier argues all work performed by the Claimant which was continuous with his regular assignment constituted a single shift. It distinguishes such continuous service from being called back to work. The Carrier also relies on various arbitral decisions which have defined a work day as a twenty-four hour period commencing with the start of an assignment.

Both the Carrier and the Organization make logical arguments. On the one hand, this Board has long recognized that the work day generally is a twenty-four hour period beginning with the start of the shift. If we were to follow this principle, any service performed by the Claimant between 11:00 P.M. on Thursday and 11:00 P.M. on Friday would be considered his fifth day of the workweek. The Claimant's first rest day would then run from 11:00 P.M. on Friday to 11:00 P.M. on Saturday, which would afford him only eight hours on his second rest day as his first assignment of the workweek begins at 7:00 A.M. on Sunday. The Organization, on the other hand, would have the Claimant enjoy two full rest days of twenty-four hours each.

Where an employee is assigned to a position that works the same shift for five consecutive days, the employee is off duty for sixty-four hours between the end of one workweek and the beginning of the next. As a general rule, the rest days are the two twenty-four periods immediately prior to the commencement of work on the first day of the workweek.

The sixteen hours before that are still part of the last work day of the week. Because of the nature of the Claimant's relief assignment, however, he is off duty for only forty-eight hours.

The Agreement, in Rule 5-A-1, refers to providing two rest days per week, but does not define the length of the rest days. It is consistent, however, to assume that rest days, like work days, will also be twenty-four hours in length. Dictating that the Claimant's first rest day begins at the conclusion of his assigned hours on the fifth work day does not conflict with Rule 4-B-1, which governs pay for overtime worked continuous with the shift. The Carrier's definition, however, conflicts with the concept of affording the Claimant two rest days in that it would allow him only thirty-two hours. We must, therefore, reject that definition. In the Claimant's case, his first rest day is from 7:00 A.M. on Friday to 7:00 A.M. on Saturday. The next twenty-four hours constitute his second rest day. Because he performed service on each of his two rest days, his compensation for the second day should have been at the double-time rate, as claimed by the Organization. The Agreement, therefore, was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.