

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30987
Docket No. SG-30867
95-3-92-3-668

The Third Division consisted of regular members and in addition Referee Dana E. Eischen 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 Corp. (Conrail):

Claim on behalf of J. P. Donaldson:

- (A) The Carrier violated the current Signalmen's Agreement, when it failed to call the Claimant, the section maintainers, to perform work on a Slide Fence on his territory.
- (B) The Carrier should now be required to compensate Claimant five (5) hours at the applicable overtime rate of pay. G.C. File No. RM-2180-40-991. Carrier File No. SG-370. BRS File Case No. 8847-Conrail."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

According to this record, it is not disputed that Carrier violated Claimant's Agreement rights by assigning an Assistant Inspector, C&S, to perform five hours of service on a Slide Fence on WBV Secondary on June 2, 1991. Claimant was the Maintainer for

that area and, thus, he should have been utilized for the overtime duty. Following an appeals discussion on August 16, 1991, Carrier allowed Claimant five hours at the straight-time rate of pay, but denied his claim for the overtime rate on grounds that he "did not actually perform overtime service." Thus, the claim comes to us seeking the difference between the straight-time rate allowed and the overtime rate claimed.

It is past time to cease burdening the over-extended resources of this Board with such a claim. By now, there should be no doubt that the proper "make-whole" remedy for lost overtime work opportunity is payment at the overtime rate. In short, Claimant was entitled to be made whole for the earnings he would have achieved but for Carrier's admitted violation. See Third Division Award 28031 involving these same parties. See also Third Division Awards 23921 and 24046. According to Third Division Award 22569:

"The Organization has continued to press for time and one-half payments and the only issue before us would appear to be whether or not the claim should be paid at the overtime or straight-time rate."

In his presentation here, Claimant has demonstrated that he was entitled to be called to perform the work improperly performed by the outside source. Under those circumstances, we are inclined to sustain the claim. This issue has been before this Board (straight-time rates as opposed to time and one-half rates) on a number of occasions. We have held that it is appropriate to award payment at time and one-half rates if the employee would have been compensated at that rate had he or she been used to perform the work involved in the claim. See, for example, Awards 21767, 21707, 20413 and 19947.

See also, Third Division Award No's. 2675, 10625, 5075, 5091, 10009, and 10033."

The claim is sustained for the difference between the straight time rate allowed and the overtime rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.