

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31623
Docket No. MW-31190
96-3-93-3-188**

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned employees working on Gangs TO-451 and SM-452 to work holiday makeup time, i.e., one (1) hour overtime [eleven (11) hours instead of their usual ten(10) hours] on July 1 and 2, 1991, and paid each of them at their respective straight time rates instead of at their respective time and one-half rates of pay (System Docket MW-2396).

2. As a consequence of the aforesaid violation, each of the Claimants, i.e., those employees assigned to Gangs TO-451 and SM-452, listed below * shall each be allowed two (2) hours' pay at their respective time and one-half rates for July 1 and 2, 1991 and for each subsequent holiday where makeup overtime is worked for which the Carrier only pays the straight time rate of pay.

*	L. Dukes	J. M. Orris
	G. L. Mardis	R. D. Webb
	R. L. Kadri	R. P. Shull
	J. R. Troup, Jr.	J. C. Burch
	C. Wilson, Jr.	D. J. Wallace
	C. D. Schwab	M. P. Woyansky, Jr.
	M. A. Pahls	D. R. Stinchcomb
	K. K. Spaulding	T. A. Houser
	J. H. Caldwell	W. M. Rodgers
	R. A. Musser	R. R. Gragg
	G. L. Cline	T. L. Putman
	G. H. Long, Jr.	H. E. Oney

R. E. Shrecengost
L. R. Briones
C. R. Himnes
R. T. Beffert
D. L. Minich
W. E. Nowalk
R. L. Rodgers, Jr.
C. Thompson
M. C. Vodhanel
F. S. Mazzan
J. A. McQuillen
W. G. Carroll
W. H. Veigel
L. R. Wendland
H. L. Cleckley
D. W. Stahovec
R. E. Metzger
D. L. Shelly
R. J. Kaley
F. M. Rios
R. L. Fink
D. B. Millard
C. G. Moon
E. C. Wells
C. N. Grimm
J. L. Robinson
J. L. Robertson
R. B. Hardwick
D. R. Ganster
B. Simms
C. L. Stickelmeyer
J. Cuelbar, III
W. L. Hale

F. N. Hayes
J. E. Foster
M. F. Ongley
D. H. O'Brien
E. L. Smith
K. E. Robertson
W. L. Tarver
D. P. Boyd
J. Fugett
D. B. Perry
I. W. Watson
H. J. Irwin
W. R. Sutton
A. O. Putman
A. L. Artrip
C. E. Cherry
P. Spoljaric
D. M. Weaver
V. D. Nitz
W. J. Smith
E. D. Whitmore
D. D. McCrobie
G. Stralko
E. C. Wilson
M. G. Rodriguez
M. A. Fife
R. A. Ramsier
J. P. Gee
L. C. Morlan
B. M. Walton
J. A. March
S. E. Hazel
L. S. Papalas"

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.

Claimants are employees whose regular schedules consisted of four ten hour days per week. On July 1 and 2, 1991, Claimants worked eleven hours because of the upcoming July 4th holiday. The Organization contends that Claimants were entitled to time and one-half payments for the one hour each day that they worked in excess of ten. The Organization relies on Rule 11(a), which provides in relevant part:

"Time worked preceding or following and continuous with a regularly assigned work period shall be computed on the actual minute basis and paid for at time and one-half rates. . . ."

Carrier observes that Rule 14 obligates it only to pay eight hours at the straight time rate for holidays. Carrier further observes that Rule 10 provides for a forty hour work week. Carrier argues that, in light of Rule 14, employees working four ten hour days would be paid only for thirty-eight hours for weeks containing holidays, i.e. three ten hour days worked and eight hours holiday pay. Consequently, Carrier contends, it gave the Claimants the opportunity to work an additional two hours during the week of July 4th to enable them to be paid for a full forty hour week. Carrier contends that its actions were in accordance with the Agreement and established past practice.

The Board agrees with Carrier's position. Although the claim maintains that Carrier assigned the Claimants to work eleven hours on July 1 and 2, Carrier disputed this on the property, maintaining that the Claimant's were given the opportunity to work the additional hours and agreed to do so voluntarily. The Organization offered no proof that Claimants were required to work the extra two hours.

Carrier's actions allowed Claimants to be paid for a full forty hours for the week containing the July 4th holiday. If the Organization's argument were accepted, if Carrier wanted to avoid over-time compensation, it would have to limit Claimant's to payment for a thirty-eight hour week. The Organization suggests that Carrier should grant employees working four ten hour days ten hours of holiday pay. Rule 14, however, is quite explicit in limiting Carrier's holiday pay obligation to eight hours at straight time rates. Unlike other rules in the Agreement, Rule 14 does not distinguish between eight hour day and ten hour day employees.

Carrier's actions herein are implicitly authorized in Rule 14's limitation of holiday pay to eight hours, coupled with Rule 10's provision for a forty hour week. Rule 9(c) makes this explicit by authorizing Carrier to work four ten hour day employees up to 32 hours at straight time rates during a week containing a holiday. The Organization objects that Carrier did not cite Rule 9(c) explicitly during handling on the property and urges that we not consider it. Carrier contends that Rule 9(c) is referenced implicitly in Rule 10, which was cited explicitly on the property. Even granting the Organization's objection and disregarding Rule 9(c), we still find that the propriety of Carrier's practice is implied within Rule 14's provision for eight hours of holiday pay regardless of whether the employee's regular shift consists of eight or ten hours.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.