Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31780
Docket No. SG-31985
96-3-94-3-326

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of W.E. Whitebread Jr., W.E. Bruner, and L.W. Kramer for payment of 21.5 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 4-B-2(b), when it failed to compensate the Claimants for time they were held away from their headquarters from December 13 to December 15, 1992. Carrier's File No. SG-577. General Chairman's File No. RM2450-105-693. BRS File Case No. 9341-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 employee or employees involved in this dispute are respectively carrier or 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 were given due notice of hearing thereon.

The Claimants in this case were each assigned to regular positions in Seniority District #7 with assigned rest days of Saturday and Sunday. Claimants Kramer and Whitebread were assigned to 8-hour per day positions. Claimant Bruner was assigned to a 10-hour per day position. Due to a major snow storm which occurred in the territory of Seniority District #14, an emergency signal repair situation was created. To assist in the correction of this emergency situation, the three Claimants were temporarily removed from their regular assignments in District #7 and were sent to District #14 to work with other District #14 employees. Claimants were paid at the overtime rate for the travel time from their homes in District #7 on Sunday, December 13, 1992, until their arrival at District #14, as well as for the time spent working in District #14 until they were released due to the Hours of Service Law and put up for rest. They were additionally paid at the overtime rate for the travel and meal period time involved from the work site in District #14 to the hotel where they were accorded a rest period.

On Monday, December 14, 1992, Claimants resumed duty at 7:00 A.M. at the hotel and worked a full 12 hours for which they were paid at the appropriate straight time and overtime rates including travel time from and to the hotel plus meal period time. On December 15, 1992, Claimants again reported for service at 7:00 A.M. at the hotel and returned to District #7 where they resumed their normal work assignments. For the travel time back to District #7, Claimants were paid at the overtime rate. For the work performed on their regular assignments in District #7, they were paid at the straight time rate. For some reason which is not explained by either of the parties, Claimant Bruner was also compensated for two 10-hour vacation days for December 14 and 15 in addition to the compensation he received for all work and travel time as outlined above.

The claim in this dispute centers around the periods of time from 6:30 P.M. December 13 to 7:00 A.M. December 14 and from 10:00 P.M. December 14 until 7:00 A.M. December 15 during which the Claimants were off duty taking rest - a total of 21.5 hours. There is no argument or apparent disagreement over the nature or amounts of pay allowed for the actual travel and work and meal period times on any of the claim dates.

The Organization bases its position primarily on the language of Rule 4-B-2 which reads as follows:

"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."

They argue that Paragraph (b) of Rule 4-B-2 was violated by Carrier when it failed to compensate the Claimants at the overtime rate for the periods of time during which they were taking rest. They contend that there is no exception either stated or implied in Rule 4-B-2(b) which allowed Carrier to stop paying the employees on a continuous time basis until they returned to the point at which they were originally called. As previously mentioned, the Organization does not seek overtime pay for the first 8 or 10 hour periods of work performed by the Claimants on December 14. Rather, they challenge only the periods of time on each date when the employees were off duty taking rest after having worked a full 12 hours on each date.

For their part, Carrier argues that the emergency situation which existed in this instance created a condition in which the temporary headquarters of the Claimants became the hotel at which they were accorded rest periods. Carrier further contends that the Claimants were advised of the nature of the situation to which they were going and accepted the conditions without protest or reservation. Carrier points to several Awards of this Division which, they say, give Carrier a greater latitude in the reassignment of employees to meet emergency situations. Carrier additionally argues that the Organization has not shown by rule requirement or otherwise any restriction to Carrier's temporary designation of a hotel as a temporary headquarters point to permit the accomplishment of emergency work or that any Signal Department employee has ever been compensated for a rest period during which no work was performed.

From a review of the case record and after considering all of the arguments advanced by the parties, the Board is convinced that the handling of and payment to the Claimants in this case was complete and proper. The Awards cited by Carrier in their presentation of this case are of no significant help in our determination of this dispute inasmuch as those awards concerned themselves generally with Carrier's right to use employees from one seniority district or territory to perform service in an adjacent district during emergency conditions. No such argument is present in this case. Rather, this dispute centers around the proper payment which accrues to employees from one district while working in an adjacent district during emergency conditions.

The storm required Carrier to take expeditious action to restore necessary services. Such action may well take precedence over a normal application of agreement rules during the emergency period. In this case, the emergency dictated that employees from an adjacent district were needed to correct the situation. There is no evidence or argument in this case record to suggest or prove that the Hours of Service Law was overridden. Consequently, after the employees had been on duty for 12 consecutive hours, they were required to have a rest period. Carrier's designation of a hotel in the vicinity of the emergency work area as a temporary headquarters for the duration of the emergency period is not found to be in violation of any agreement rule. In fact, it was a prudent managerial decision to deal with the emergency conditions. The language of Rule 4-B-2(b) which refers to returning to "their headquarters" was complied with when the Claimants were compensated for the work, travel and meal period times during the emergency situation.

We need not address the argument dealing with Carrier's insistence that the employees had allegedly acquiesced in the temporary move to the adjacent seniority district except to note that individuals cannot "agree" to violate the negotiated rule agreement which has no significance in this case where there was no rules agreement violation. The claim as presented is, therefore, denied.

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 20th day of November 1996.