

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32506  
Docket No. MW-31129  
98-3-92-3-906**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed and refused to timely and properly effectuate the monetary settlement agreed to by the parties and verified within a letter dated December 19, 1991 (System File NEC-BMWE-SD-2991 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Mr. G. Butz ‘. . . 6% interest on the money due Mr. Butz, per month, compounded on the monthly anniversary date in which the Claimant would have received his paycheck for the initial incident. That being, October 4, 1990. . . .’”**

**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 were given due notice of hearing thereon.**

**Claimant established and holds seniority on the Philadelphia Division, with regular hours Monday through Friday, rest days Saturday and Sunday.**

**On Wednesday, September 19, 1990, Claimant was medically withheld from service pending the results of a drug/alcohol screen. On Monday, September 24, 1990, Carrier was notified that the results were negative. Therefore, on Tuesday, September 25, 1990, Claimant returned to work.**

**Claimant was compensated for the time he had lost on September 20, 21 and 24, 1990 due to the September 19 drug/alcohol screen, and received said payment on Friday, October 5, 1990. As such, the foregoing dates are not in dispute.**

**A dispute did arise, however, with regard to whether Claimant was also entitled to payment for a 12.5 hour overtime assignment on his rest day, September 23, 1990. On October 25, 1990, the Organization submitted a claim asserting that Claimant could have worked "at least one overtime assignment" that was given to fellow employee Kuhns. According to the District Chairman, Kuhns worked 12.5 hours operating a backhoe putting in ties. Carrier initially denied the claim, but subsequently modified its decision and agreed to compensate Claimant. On December 19, 1990, Carrier sent a letter to the District Chairman which stated that it intended to compensate Claimant for the overtime.**

**However, Carrier neglected to pay said overtime, and on May 1, 1991, the Organization sent the Division Engineer the following communication:**

**"This is in reference to a claim which was presented in behalf of Mr. G. Butz and subsequently answered by yourself under letter dated December 19, 1991.**

**In your letter of December 19, 1991 you agreed to pay Mr. Butz for the claim and all time lost.**

**I have recently been informed by the employee that he has not yet received the compensation.**

Kindly investigate and advise why the payment has been held up so long and when the same will be made."

In subsequent correspondence dated June 26, 1991 the Organization further asserted that:

"Due to Carrier's failure to handle payment, after your letter of December 19th, the Union must consider this a violation of that portion of Rule 64 that reads, in part, that:

' . . . Should any such claim or grievance be disallowed, AMTRAK shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing, of the reasons for such disallowance.'

This violation alone makes the original claim again payable as presented, and it has been progressed to the next level for handling."

In its reply to the Organization, Carrier stated that:

"Investigation has been made into your claim presented in behalf of G. Butz, received in this office via certified mail and placed under our file number 001613. The following has been determined.

Payment of the original claim for 12 hours to Mr. Butz was initiated and forwarded to Payroll about August 13, 1991. Payment for the additional half hour claimed plus the difference in lost earnings between straight time and overtime rates has been initiated by Labor Relations on August 20, 1991. Straight time claimed for the 20th and 21st of September was already paid to Mr. G. Butz as shown on the attached history of paid labor. Together these payments constitute full compliance with my letter of December 19, 1990. Mr. Butz should receive full and final payment by September 30, 1991.

Your claim for 6% interest on the original claim, citing rule 64-E is defective. Rule 64-E has no provision regarding payment of interest on claims that are allowed.

**In view of the above, the remainder of your claim is denied."**

**However, on June 26, 1991 the District Chairman advised Carrier of the following:**

**"This submission is in addition to the above violations, and your violation of Rule 64, section I, that portion that reads, in part, that:**

**'... (i) When claims are allowed, the employee and his duly accredited representative, as defined in Rule 83, shall be advised, in writing the amount involved and the payroll on which payment will be made.'**

**This officer has not been properly notified of the payment date, or the amount because the same was never done by Carrier.**

**Therefore, based on the date that this Officer became aware of the Carrier's failure to compensate, which was April 30, 1991, which is within 60 days of this submission, claim is herein presented for interest to be paid to the Claimant for the time that the Carrier has held and had the use of his money.**

**Claim is presented, continuous, per Rule 64-E, for 6% interest on the money due to Mr. Butz, per month, compounded on the monthly anniversary date in which the Claimant would have received his paycheck for the initial incident. That being, October 4, 1990, the date Mr. Butz would received his pay check for the time he would have worked had he not been taken out of service.**

**This claim, for the allowance of interest, is intended to make the employee whole for the loss of the use of the money that the Carrier has wrongfully withheld and is still withholding, since the date of the original incident which was September 19, 1990.**

**Kindly advise if you will pay this claim and if so which payroll period compensation will be made."**

The issue presented in this case is whether Claimant is entitled to 6% interest based on \$81.81 due him as a result of a December 19, 1990 claim settlement which was not completely effectuated until September 5, 1991. There is no Agreement Rule which provides for the payment of interest on claims as the Organization has requested, nor did the Organization cite any such Rule.

Further, the practice on this property, as sanctioned by the Board and other Section 3 tribunals, has been to allow the pro rata rate of pay, as opposed to the punitive rate of pay, for overtime assignments not actually worked. It is not unreasonable to conclude that such practice may have contributed to the apparent confusion and delay in implementing the Parties' agreement that Claimant be compensated for the involved overtime assignment. Even though a demand for interest is not illogical and is allowed in some arbitration settings, the weight of authority is to the contrary in Section 3 arbitration tribunals. ( See, for example, Third Division Awards 24710, 20014, 18633 and 18464). In the absence of an Agreement Rule or practice to the contrary, and in the face of the authoritative precedents, there is no proper basis on which to sustain this claim for the requested interest payment. Therefore, this claim must be 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 25th day of March 1998.