

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34142
Docket No. MW-32492
00-3-95-3-393**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks 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 Agreement was violated when the Carrier assigned Cleveland District employe J. Rosario to perform vehicle operator’s work on the Youngstown Seniority District on June 3, 29, July 1, 6, 19, 20, 21, 22, 24, 26 and 27, 1993, conceded such and then failed and refused to pay Mr. D. R. Stinchcomb for sixty-eight (68) hours at the vehicle operator’s straight time rate and thirty (30) hours at the vehicle operator’s time and one-half rate as claimed (System Docket MW-3435).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to pay Mr. D. R. Stinchcomb sixty-eight (68) hours at the vehicle operator’s straight time rate and thirty (30) hours at the vehicle operator’s time and one-half rate as claimed.”**

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.

There is no dispute as to the facts of the case, nor is there any dispute regarding the violation as the Carrier readily admitted its error and paid the Claimant 103 hours at the straight time rate. The dispute before the Board is the Carrier's refusal to pay the Claimant a sum equal to that earned by the employee wrongfully assigned to work in the Claimant's seniority district. The employee who did the work did perform some overtime work.

From the outset, from the Statement of Claim, the Organization seeks the equivalent of 68 hours straight time and 30 hours of overtime. Thirty hours overtime is equal to 45 hours straight time. Add 45 hours to the 68 hours equals 113 hours. The Carrier has already paid the Claimant a sum equal to 103 straight time hours. If the Carrier intended to pay only a straight time wage for all hours worked, going by the Statement of Claim, they should have paid only 98 hours, not 103. Thus, to the Board, the claim if sustainable, is good only for the equivalent of ten straight time hours.

Straight time verses time and one-half when it comes to compensation for time lost by one employee when the Agreement has been violated is an age-old argument waged over the years with various number of successes and failures, even by some arbitrators involving cases on the same Carrier involving the same arbitrator. In this instance, for guidance, the search has been for Awards on this property involving this Organization.

A review finds six Awards involving the parties here in dispute and one earlier Award involving this Organization and the former Pennsylvania Railroad that sustained payment for lost time when it included payment of the overtime rate. See Decision 433 of the Pennsylvania Railroad dated September 19, 1957, and Third Division Awards 26431, 26448, 27335, 27638, 29505 and 32107.

On the other hand, the Carrier furnished a number of Awards in support of its argument, but not one involves this Organization and this Carrier.

Insofar as this craft is concerned, on this Carrier arbitral authority to compensate for time lost because of a Rules violation, hours worked at the overtime rate is on the side of the Organization.

The Claimant would have been paid the appropriate rate for all hours worked by the wrongfully assigned employee. That is the measurement of damages due the Claimant in this case; however, the Board cannot exceed that which is sought in the Statement of Claim that is before the Board. The Claimant is due the equivalent of ten straight time hours over and above that which he has already been paid.

AWARD

Claim sustained in accordance with the Findings.

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 19th day of June, 2000.