

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35590
Docket No. SG-34747
01-3-98-3-436

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Long Island Rail Road Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim on behalf of P. J. McGlone, G. R. Lebrecht, P. M. Prusinski, J. Catalanotto, C. G. Fedorow, and R.W. Cretella for payment at the double time rate for all hours worked after their bulletined starting time on February 9, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 40(f), when it did not pay the Claimants the correct rate for their service on their second rest day. Carrier’s File No. SG-09-97. BRS File Case No. 10709-LI.”

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.

This claim filed on March 31, 1997 protests the Carrier's failure to pay the six named Claimants at the double time rate of pay for work performed after their bulletined starting times on Sunday, February 9, 1997, their second non-scheduled day, as a violation of Rule 40(f), which states as follows:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that workweek and has worked on the first rest day of his workweek, except that emergency work paid for under the call rules will not be counted as qualifying service under this Rule, nor will it be paid for under the provisions hereof."

There is no dispute that the Claimants had regular assignments of Monday to Friday, with rest days of Saturday and Sunday, and had performed all regular work hours in the workweek from February 3 through 7, 1997. They were called to work between 2:00 A.M. and 3:00 A.M. on February 9, 1997 for snow duty and worked until 5:00 P.M. that day. They were paid at the time and one-half rate for all hours worked on February 9, 1997.

The Organization argues that, since the part of the work performed by the Claimants on February 9, 1997 from 2:00 A.M. to their bulletined start time (8:00 A.M.) fell within their first rest day, they qualify for double time for the work actually performed after their bulletined start times on their second rest day under the above-quoted provision, relying on Public Law Board No. 4622, Award 6. The Carrier contends that the emergency exception to Rule 40(f) applies in this circumstance, as the assignment involved emergency snow work, rather than planned overtime.

A careful review of the record convinces the Board that the record on the property does not sufficiently support the Carrier's claim that an emergency existed to remove the Claimants from the coverage of Rule 40(f).

The only argument made by the Carrier on the property was that an emergency existed because the Claimants had to be called out at 2:00 A.M. to deal with snow removal. It gave no explanation of the type of situation involved, the effects of the situation requiring immediate action or why the snow removal activity could not have

been anticipated. The Carrier merely argued on the property that the situation fell within the dictionary definition of "emergency," an unexpected situation that requires prompt action. The Board has repeatedly held that the Carrier has the burden of proof of an emergency and mere assertions of emergency are insufficient to meet that burden. See Third Division Awards 31531, 22821 and 20310.

We do note that, in its Submission to the Board, the Carrier attempted to provide evidence of the weather data forecast showing that it could not have anticipated what occurred which was a weather anomaly, and set forth a recitation of facts indicating that unsafe conditions existed at West Side Yard due to ice build-up that the Carrier had to respond to immediately to prevent employee injury. This evidence comes too late to be properly considered by the Board, but is the type of information the Carrier could have provided on the property to support its claim of an emergency condition. Having failed to do so, the Carrier did not meet its burden of proving that an emergency situation existed on the claim date. Accordingly, the Claimants are entitled to the double time rate for hours worked on February 9, 1997 between 8:00 A.M. and 5:00 P.M. See Public Law Board No. 4622, Award 6.

AWARD

Claim sustained.

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 24th day of July, 2001.