

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36850
Docket No. MW-36934
04-3-01-3-489

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Messrs. W. R. King, J. Gillon and A. Melton in connection with their work assignments at Dothan, Alabama on March 1, 2000 [System File B14105500/12(00-0506) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants W. R. King, J. Gillon and A. Melton shall now be compensated for five and one-half (5.5) hours' pay at their respective time and one-half rates of pay.”

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.

The facts of this claim are not in dispute. It is the application of Rule 11(g) to the facts that led to the controversy.

The Claimants worked on February 29, 2000 and were released. A derailment required that they be recalled to duty that same calendar day. They worked into the early morning hours of March 1, when they were given an opportunity to obtain bed rest at a nearby lodging facility. They were recalled to duty later that morning. The claim seeks compensation benefits as though they were in continuous service due to the shortness of the rest opportunity.

Although the precise time from their release from duty on March 1 until they again reported for duty that same morning is not entirely clear from the record, a Best Western hotel receipt shows that they checked into the hotel at 1:54 A.M. and checked out at 7:34 A.M., for a total period of five hours and 40 minutes at the hotel.

Rule 11(g) reads, in pertinent part, as follows:

"If during the time on the road an employee is relieved from duty and is permitted to go to bed for five (5) or more hours, such relief time will not be paid. . . ."

Although the time at the hotel exceeded five hours, the Organization maintains that necessary clean up, winding-down, and re-awakening time reduced the bed rest opportunity to less than five hours. The Carrier contends the overall relief period complied with the Rule.

Neither party provided any prior Award precedent or bargaining history evidence. Thus, the dispute is one of first impression.

Given the state of the record, we conclude that Rule 11(g) requires only a period free from duty of five hours. By its terms, the Rule speaks to a period when an employee is ". . . relieved from duty and permitted to go to bed . . ." of five hours

or more. The Rule does not explicitly require actual time in bed of five or more hours.

On this record, the hotel receipt establishes that the Claimants were relieved from duty for at least five hours on March 1, 2000. This period was sufficient to break their entitlement to continuous duty pay. Under the circumstances, the 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 28th day of January 2004.