Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37561
Docket No. CL-37694
05-3-03-3-48

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc.) (former Fruit Growers Express
(Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12959) that:

Claim No. 1

Claim of the System Committee of the TCU (FG02/0015) (GL-12959) that:

The following claim is hereby presented to the Carrier in behalf of Claimant Mr. Charlie Martin.

(a) The Carrier violated the former Conrail Agreement, as amended effective June 1, 1999, particularly Rules 22, 23, 24 and other rules when it changed ISR position 251 to work from on each Saturday 2pm to 10pm and on Sunday from 1pm to 9pm, without giving proper sixteen hours of rest between assignments.

(b) Commencing Sunday August 9, 2001 and continuing for each and every Sunday until this violation has been corrected, Claimant must be allowed one (1) hour at the overtime rate of pay.

(c) In order to terminate this claim said position must be changed back to the original hours with the proper rest between assignments.

(d) This claim has been presented in accordance with Rule 45 and must be allowed.

(e) Claim is further made that Carrier violated Rule 45(a) when it did not deny the claim.

Claim No. 2

Claim of the System Committee of the TCU (FG02/0016) that:

The following claim is hereby presented to the Carrier in behalf of Claimant Mr. Paul Brewer.

(a) The Carrier violated the former Conrail Agreement, as amended effective June 1, 1999, particularly Rules 22, 23, 24 and other rules when it changed ISR position 157 to work from on each Saturday 3pm to 11pm and on Sunday from 2pm to 10pm, without giving proper sixteen hours of rest between assignments.

(b) Commencing Sunday September 9, 2001 and continuing for each and every Sunday until this violation has been corrected Claimant must be allowed one (1) hour at the overtime rate of pay.

(c) In order to terminate this claim said position must be changed back to the original hours with the proper rest between assignments.

(d) This claim has been presented in accordance with Rule 45 and must be allowed.

(e) Claim is further made that Carrier violated Rule 45(a) when it did not deny the claim."

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 current dispute arose subsequent to a one-hour schedule change resulting in two employees working a Sunday shift that began less than 16 hours after the end of their Saturday shift. Thus the employees each worked more than eight hours in a 24-hour period. The Organization filed the above claims in their behalf on October 17 and October 23, 2001, respectively. By letter of December 14, 2001, Terminal Manager L. O. White notified the District Chairman that he had authorized the claims to be paid as presented and also authorized the positions to be returned to their original hours of work.

White's letter read, in pertinent part, as follows:

"Without establishing precedent or admitting the merits of the claims, the company has decided to revert back to the hours in place prior to the July 2000 bulletins. Accordingly, position 157 will report at 3:00 P.M. on Sundays and position 251 will report at 2:00 P.M. Sundays, effective immediately. By copy hereof, the current incumbents of those positions are hereby notified of those changes.

> A payroll adjustment of 30 minutes per week for the applicable weeks will be made for the periods involved in each claim."

The Organization maintains that the Carrier's attempted payment of the claims is insufficient, because the overlap of hours was one hour for each occurrence and the proper payment of the claim would be one full hour at the time and one-half rate as noted in the claim. It argues that the Carrier deprived the Claimants of one hour's rest each Sunday, for which the proper payment is time and one-half, not the 30 minutes applied. It points out that the Claimants worked in excess of eight hours in 24 hours and, therefore, must be paid according to the relevant portion of Rule 24(a) which reads, in pertinent part, as follows:

> "A regular relief employee assigned to a position who performs service on two (2) positions within a twenty-four (24) hour period, either of which is rest day relief work, will be paid straight time for the first eight (8) hours worked in each position. (Tag end assignments will be kept at an absolute minimum.) For time worked in excess of eight (8) hours on any of the positions so relieved, he will be paid time and one-half."

The Organization also insists that because there was no actual denial of the claims in accordance with Rule 45(a) the claims must be paid as presented. It further contends that the Carrier's payment and rescission of the schedule change does not constitute a settlement of the instant claims.

For its part, the Carrier contends that the claims have already been paid and there is no further appropriate recourse for the Organization. It notes that the Company capitulated with respect to the claims by returning the Sunday schedules to where they had been more than one year prior and compensating the employees for one hour of the Sunday shifts under claim at the time-and-one-half rate, without establishing precedent or admitting the merit of the claims.

The Carrier further maintains that because the employees had already been paid eight hours at the straight time rate for each Sunday worked, conversion of the first hour to the overtime rate required an additional payment of only one-half hour per week involved. It points out that nowhere in the claims did the Organization

suggest that the Claimants should have been paid nine and one-half hours' pay for their eight hours of work. Rather, the Carrier argues, the claims propose that one hour of the eight hours worked on Sunday should have been paid at the overtime rate because it fell within the same 24-hour period as the previous eight hours worked on Saturday.

Finally, the Carrier insists that the Organization's contention that the Carrier's letter and payment of the claims did not constitute an adequate denial and that, therefore, the claims should be paid again as presented, is a transparent attempt to gain "two bites of the apple" on a matter that is, in fact, moot.

The Board carefully reviewed the facts and positions in this matter. At the outset, we do not find that the Carrier erred with respect to its calculation of the compensation due the Claimants as a result of their working a ninth hour (even though that hour was in fact part of the following shift) within a 24-hour period. There is no controversy on this record that the Claimants were paid an additional half hour's pay for every week they worked the controversial shifts. There is no evidence that the Claimants worked more than one additional hour beyond eight hours in a 24-hour period. Accordingly, by any reasonable calculation, the Carrier complied with the language of Rule 24 (a).

With respect to the Organization's claim that the Carrier had not actually denied the claim and, accordingly, the claims should be paid (again) as presented, we find that the Organization's position is not supportable. Rather than asserting that the Carrier's capitulation, as per its letter of December 14, 2001, was, for example, an incorrect payment, the Organization ignored the fact of the Carrier's compliance with the claims and sought to revive what was essentially a paid, and therefore no longer viable, claim. We find no basis for condoning the Organization's attempt to disregard the Carrier's obvious settlement of the claim, as presented, in the hopes of extracting a double payment from the Carrier. Accordingly, we find that the instant claims are moot and must, therefore, be dismissed.

AWARD

Claim dismissed.

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 July 2005.