

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40936
Docket No. CL-40455
11-3-NRAB-00003-080289

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13199)
that:

- (a) Carrier violated the rules of the current Clerks’ Agreement at Kansas City, Kansas on December 29, 2004, when it failed and/or refused to properly compensate D. B. Porter when called to protect overtime on Crew Hauler Position No. 6801; and
- (b) Claimant Porter shall now be compensated one hour and thirty (1’30”) minutes pay at the straight time rate of Claimant’s Regular Position No. 6802, in addition to any other compensation Claimant may have received for this day.”

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 Claimant was called on Wednesday, December 29, 2004, for overtime work. The Claimant reported at 1:30 P.M., 90 minutes before his regular assignment. He then worked his regular 3:00 P.M. to 11:00 P.M. assignment.

The Claimant was paid one and one-half hours at the overtime rate for the 90 minutes prior to his regular assignment and eight hours straight time for his regular assignment.

The Organization maintains that the Claimant should be paid three hours at the time and one-half rate pursuant to Rule 32-I for the work performed from 1:30 P.M. to 3:00 P.M. and one hour and 30 minutes at the time and one-half rate for the period from 9:30 P.M. to 11:30 P.M. pursuant to Rule 32-A.

The Carrier counters that Rule 32-H is controlling. It contends that the plain language of Rule 32-I cannot be ignored. It asserts that the starting time of the Claimant's regular assignment did not change from 3:00 P.M. simply because he reported for overtime work prior to his regularly scheduled starting time.

Rule 32-A provides:

"Except as otherwise provided in Rule 32-I, time in excess of eight hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

Rule 32-H (2) provides:

"An employee who works all of his own assignment and part of another, either before or after his own assignment and continuous therewith, shall be paid the rate of his own assignment with time and one-half for time in excess of eight hours."

Rule 32-I provides:

“For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees notified or called to perform work not continuous with the regular work periods will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one half will be allowed on the minute basis.”

In the instant matter, the Board carefully reviewed the record evidence regarding whether the Organization proved that the Claimant is entitled to be paid three hours for the 90 minutes of work he performed before his regular shift, and overtime for the 90 minutes he worked in excess of eight hours.

Regarding the 90 minutes worked prior to the beginning of the Claimant’s regular assignment, the Carrier submits that the Claimant was properly paid in accordance with Rule 32-H(2) and the Organization counters that Rule 32-I controls. Although mentioned in correspondence as the practice on the property, the Organization did not present any evidence to confirm a past practice of paying employees three hours at the straight time rate when called to work prior to their regular assignment and working less than two hours.

Regarding the 90 minutes from 9:30 P.M. to 11:00 P.M., Rule 32-I provides that employees will be paid for “continuous service after regular working hours.” The Claimant worked his regular eight hours, with 90 minutes’ overtime on the front end continuous to his regular assignment. The Organization has not cited an applicable Rule or proven a past practice of computing eight hours from the beginning of continuous service prior to the regular assignment.

Accordingly, having determined that the cited Rules and past practice do not support the Organization’s position, the Board finds that the Organization failed to meet its burden of proof and the claim is denied.

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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 24th day of March 2011.