

Award No. 5262

Docket No. MW-5231

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis J. Robertson, Referee.

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood;

(1) That the Carrier violated the agreement by failing to compensate the following employees:

Section Foreman W. R. Holler

Section Laborers L. D. Nickles, D. C. Harris, C. W. Banks,  
J. W. Schance and O. H. Sammons

at the double time rate during the period 12:00 Midnight, March 21 and 7:30 A. M., March 22, 1948 while they were performing emergency service due to high water;

(2) That the claimants referred to above be now reimbursed for the difference in compensation received at the time and one-half rate and what they should have received at the double time rate at their respective rates of pay during the period referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** At 10:00 P. M., Saturday, March 20, 1948, Section Foreman W. R. Holler and Section Laborers L. D. Nickles, C. D. Harris, E. W. Banks, J. W. Schance and O. H. Sammons were called to protect and watch track facilities account of storms and high water.

The above referred to employees worked continuously from 10:00 P. M., Saturday, March 20, to 7:30 A. M., Monday, March 22, 1948. The employees submitted time slips covering the period 10:00 P. M., Saturday, March 20, to 7:30 A. M., March 21, at the time and one-half rate. Overtime slips were also submitted covering the period 7:30 A. M., March 21, to 12:00 o'clock Midnight, March 22. The employees were allowed a thirty (30) minute meal period during these hours. The rate of pay claimed by the employees was the time and one-half rate.

Overtime slips covering the period 12:00 o'clock Midnight, March 22, to 7:30 A. M., March 22, were submitted at the double time rate of pay. All time claimed by the employees was allowed, except that period where double time pay was requested. The Carrier allowed all time worked at the employee's time and one-half rate.

day work, it is hardly conceivable that the organization would have found it necessary or expedient to negotiate rules on individual roads in order to require such payments. It is obvious, therefore, that in negotiating agreements which provide for double time for work on Sundays on some railroads, the petitioning organization recognized that rules such as 39(a) cannot be misconstrued or tortured into meaning that employees who have no assignments on Sundays are entitled to double time for work performed on Sundays. In other words, something was lacking and the deficiency was corrected by negotiating a new rule. Here petitioner is asking this Board, through a process of misconstruction, to rewrite Rule 39(a).

As stated before, the petitioning organization has never presented a request on this property, either formally or informally, that Rule 39 (a) be revised so as to include double time for Sunday work. Instead of attempting to negotiate an agreement similar to those it has reached on several other railroads, the organization has elected to prosecute a claim that is based, not on the provisions of any rule presently contained in the currently effective collective agreement, nor upon any other agreement with this Carrier. On the contrary, the organization in this proceeding is requesting the Third Division to write a new rule or agreement patterned after rules and agreements that are in effect on other railroads. The organization cannot be seeking an interpretation of Rule 39 (a) because, by its action in negotiating agreements with other Carriers to provide payment of double time on Sunday, it has tacitly admitted that it is thoroughly convinced that the agreement of October 21, 1944 does not contemplate double time payments for Sunday work.

Since the organization has elected to ignore the avenue of procedure that is open to it under the Railway Labor Act for negotiating a rule or agreement that would provide something that is not now contained in Rule 39 (a), the contentions of the employees in the instant proceeding must stand or fall upon the clear, precise and unambiguous language of Rule 39 (a). The rule requires first, that service performed must be **continuous** (either preceding or following) **with a regularly assigned eight hour work period**, and second, that double time will accrue only after 16 hours of continuous service **computed from starting time of the employees regular shift**. The service performed by claimants in this proceeding was not continuous with a regularly assigned eight hour work period; furthermore, the claimants do not have a regular shift on Sundays, therefore, the service performed on Sunday is not subject to the provisions of Rule 39 (a). This is a logical conclusion because these employees receive compensation at the time and one-half rate for all services performed on Sundays and holidays, whereas on regularly assigned working days the first eight hours of service are paid for at the pro rata rate.

In the light of the foregoing, the Carrier respectfully submits that Rule 39 (a), by its terms and strictly construed, does not provide double time for service performed on Sundays, therefore the monetary claim on behalf of the employees named herein is completely unsupported and should be denied.

**OPINION OF BOARD:** Claimants were members of a section gang holding regular assignments from 8 A. M. to 5 P. M. each day except Sunday. After completion of a regular assignment on Saturday, March 20, 1948, they were called out at 10 P. M. and required to work continuously through Sunday, March 21, and until 7:30 A. M. on Monday, March 22, 1948. For this service they were paid at the rate of time and one-half. Employees claim that they should be paid at the rate of double time for the period commencing midnight, Sunday, to 7:30 A. M., Monday under the provisions of Rule 39 (a).

In Award 5156, involving the Chicago and Eastern Illinois Railroad, this Board with the assistance of Referee Carter had occasion to consider a similar claim made by section men for double time for work on a day when they were not regularly assigned. We have reviewed the record in that

docket. The facts therein presented are analogous to those herein insofar as the double time claim is concerned. The rule involved (except for minor deviation in wording not affecting its meaning) is the same. In that docket and in this, the respective contentions of the parties as to the meaning and application of the rule were essentially similar. The Board there held that this Rule does not mean that double time is allowable only on days on which the employe holds a regular assignment; it means that double time accrues in any 24-hour period in which more than sixteen consecutive hours are worked and, in determining the beginning of the 24-hour period, the starting time of the regular shift will be used. We subscribe to the reasoning of that Award and, accordingly, hold that this claim should be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.