

Award No. 7242
Docket No. SG-7162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that:

All Monongahela Branch employees be compensated for a like number of hours, 6:30 P. M. to 10:00 A. M., made by Pittsburgh Division employees repairing damage done to OB Interlocking plant on March 23, 1951, caused by a derailment. Employees on Monongahela Branch were available, but not called. This is in violation of the current merger agreement of November 1, 1949, which applies to all employees of the Monongahela Branch of the Pittsburgh Division.

EMPLOYEES' STATEMENT OF FACTS: During the afternoon of March 23, 1951, the interlocking plant at OB on the Monongahela Branch was damaged by a derailment. At about 4:30 P. M. the Inspector T. & S. at Homestead, Pa., was instructed to get all the men available to work at OB.

Additional employees were called from the Pittsburgh Yards and East Liberty, Pa., to the extent of 1 Foreman, 2 Maintainers, 1 Cable Splicer, and 1 Assistant Signalman. These employees performed service at OB interlocking plant from 10:00 P. M. on March 23, 1951, until 8:00 A. M. March 24, 1951.

OB interlocking plant is located on the Monongahela Branch, the former Monongahela Division, while Pittsburgh Yards and East Liberty, Pa., are on the former Pittsburgh Division territory. Employees on the Monongahela Branch, as well as those at Pittsburgh Yards and East Liberty, Pa., each have prior rights in their respective territories by the agreement effective November 1, 1949, when the former Monongahela Division was combined with the Pittsburgh Division to make the present Pittsburgh Division.

On progressing this claim on the property, the Carrier proposed a settlement to allow each of the five claimants named in the agreed-upon facts of the joint submission 10 hours straight-time rate of their respective assignments. This proposal was made under date of March 31, 1952, in a letter directed to General Chairman C. M. Banks from General Manager A. J. Greenough, which reads as follows:

OPINION OF BOARD: The facts of this case are not in dispute. Effective November 1, 1949, Carrier's Pittsburgh Division was merged with the Monongahela Division and is now known as the Pittsburgh Division. The rosters of the former divisions were combined. However, by the November 1, 1949 Agreement of the parties, employees on the Monongahela Division retained prior rights to work in what had formerly been their territory, and those of the original Pittsburgh District retained the same rights in their old territory.

On the afternoon of March 23, 1951, a derailment damaged the Interlocking Plant at "OB" on the Monongahela Division, about 2.7 miles from the Pittsburgh Station. At 4:30 P. M. on this date the Inspector T & S at Homestead, Pa., the nearest headquarters on the Monongahela Branch, was instructed to get all the men available to work at OB.

Several hours later five additional employees were called from the Pittsburgh Yards and East Liberty, Pa. There were one Foreman, two Maintainers, one Cable Splicer, and one Assistant Signalman. These five employees performed service at OB Interlocking Plant from 10:00 P. M. on March 23 until 8:00 A. M., March 24, 1951. This claim is for time and one-half rate for five employees on the Monongahela Branch, whose work was performed by the men from the former Pittsburgh Branch. The punitive rate is claimed because the work involved on March 23 was after working hours for the employees and that on March 24 was on a rest day.

After this claim was made on the property, the General Manager stated that an unsuccessful effort was made to reach the foreman on the Monongahela Branch when the additional help was needed; and the men from the Pittsburgh Branch were only called after the failure to get the foreman on the other branch. However, on March 31, 1952, General Manager Greenough offered to settle this case if the five employees would accept pay for ten hours each at the pro rata rate. In support of his position he cited a long list of our awards in which we have enunciated the policy of allowing only straight-time pay for hours not worked, even though the employees concerned were improperly kept from performing the work which might have allowed them the time and one-half rate.

The employees point out that the practice on this Carrier's property, by prior settlements on the property, and by the actions of this Board, has been to pay the punitive rate where employees entitled to do certain work have been denied their right to work at such rates. A claim was filed for such pay for certain employees who were denied the right to work at Broad Street Station, Philadelphia, in September 1943. The matter was appealed to this Board. On March 12, 1946, the case was dismissed at the request of the complaining employees, after the Carrier had agreed to a favorable settlement on the property. (Award 3145, Docket SG-3189.)

When on June 1, 1944, this Carrier removed the work of remodeling the Interlocking Plant at Whiting, Indiana, and the installing of a reverse signaling system on the Chicago Terminal Division away from the operating division and assigned the work to employees who had no seniority rights in the Chicago Division seniority district, another claim was filed with this Board. (SG-3448.) Without a referee present, the Board disposed of this case in Award 3470, March 10, 1947. The record shows that the Carrier acknowledged that this situation was comparable to that in the Broad Street Station case just cited and acknowledged that the previous case had been settled by the parties on the "time lost" basis, that is by allowing earnings which the claimants were deprived of by the Carrier's failure to permit these employees to perform the work.

Two other comparable situations arose subsequent to this. On September 8, 1948, at Greenfield, Indiana, T & S employees of the Columbus Division were deprived of work which was given to employees of the Indianapolis Division. And on September 28, 1948, the same error in assignment was re-

peated at the same location, Greenfield, Indiana. Claims were filed in both of these situations. Both were settled on the property in accordance with the parties' established practice in such matters. These settlements were concurred in by joint memoranda, signed by the Carrier's three general managers, January 18, 1952, subsequent to the date of the incident on the Monongahela Division which is now before us.

In short, the practice of the parties has been to make adjustments on the basis of time lost and at the rate prevailing where the work was performed. But we on the Third Division have held otherwise; and the Carrier now seeks to alter the practice on its property and bring it into line with many decisions of this Board.

It is our conclusion that the punitive rate was first established in collective bargaining agreements as added compensation for those who were required to work beyond the normal work day or work week. Historically such rates have been paid only to those who have actually worked overtime or on holidays. And this Board, in a long line of precedents, has repeatedly refused to award the time and one-half rate for time not actually worked. It has been our practice to award the pro rata rate to employees entitled to perform work but who were not actually required to do the work.

Even though the parties may have pursued a different course in certain instances, many decisions of this Board have held otherwise. Those decisions are based upon sound reasoning and we see no reason to depart therefrom. The employees involved in the instant case did not work overtime. Nor did they work on their rest day. If we are to avoid a great deal of confusion in the railroad industry we must continue to allow only the pro rata rate in cases of this kind.

It was made clear in the record that the only issue between the parties was whether claimants should be paid the pro rata rate or the time and one-half rate. It is our conclusion that the contract rate and not the punitive rate should be paid to these employees who were entitled to the work in question but who were not required to perform it. That is, each of the claimants shall be paid for ten hours' time at the regular straight-time rate.

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 the Employees involved in this dispute are respectively carrier and employees 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 the Agreement was violated.

AWARD

Claim sustained to the extent set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.