Award No. 7830
Docket No. DC-7525

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 385 on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for and on behalf of William Massie, waiter; that he be paid the difference between what he earned and what he was paid as a result of the carrier's violation of Rule 2(b) of the existing agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the Organization and the Carrier of which cited rule 2(b) is a part thereof, and as follows:

> "Employes will be paid on the actual minute basis for all time worked in excess of 205 hours up to and including 240 hours in a calendar month at the pro rata rate. Employes will be paid overtime on the actual minute basis for all time actually worked in excess of 240 hours in a calendar month at the rate of time and one-half."

Claimant was at the time of instant claim a regularly assigned employe on trains 15-16 operating between Chicago and Tacoma. On August 16, 1953 claimant was directed to fill an assignment on trains 100-101 to Minneapolis and return on August 17, 1953. Again on August 29 and 30, 1953, Claimant was required to fill an assignment on trains 5-6 to Minneapolis and return on August 30, 1953. Both assignments were filled and completed on Claimant's rest or relief days and did not interfere with his regular assignment.

Claimant earned 224¾ hours in regular assignment and 41½ hours in extra work performed on rest or relief days, a total of 266¼ hours or 16¼ hours overtime. Carrier, in violation of Overtime Rule, computed claimant's earnings on straight time hourly basis at pro rata rate instead of at the overtime rate of time and one-half after 240 hours under the provisions of rule 2(b) of the agreement.

On October 6, 1953 employe's representative filed a claim on behalf of the claimant setting forth therein the time actually worked by the claimant.

OPINION OF BOARD: The confronting matter concerns the proper application of Rule 2 (b) and 3 (b) of the effective Agreement. These rules provide:

> "2 (b) Employes will be paid overtime on the actual minute basis for all time actually worked in excess of two hundred and five (205) hours up to and including two hundred and forty (240) hours in a calendar month at the pro rata rate. Employes will be paid overtime on the actual minute basis for all time actually worked in excess of two hundred and forty (240) hours in a calendar month at the rate of time and one-half. Time paid for, but not actually worked shall not be considered as time worked within the meaning of this section.
>
> 3 (b) Where an employe is required to perform service on other than his regular assignment without losing time on his regular assignment, such service shall be paid for at his pro rata hourly rate in addition to his guaranteed monthly wage. If, in performing service on other than his regular assignment, the employe loses time waiting at his home terminal for his regular assignment, he may be used for additional extra service and the earnings from all such extra service will apply against his guaranteed monthly wage; in any event he will be paid not less than that which he would have earned on his regular assignment."

There is no conflict as to essential facts. Claimant here, one William Massie, a waiter, held regular assignment on trains 15-16 operating between Chicago, Illinois and Tacoma, Washington. During the period in question Claimant worked 266¼ hours. Of this number 41½ hours were consumed in extra work on other than his regular assignment and on days which were rest days of such assignment. Compensation for all hours worked in excess of 240 were compensated for at the pro-rata rate. The claim here concerns the request that Rule 2 (b) be interpreted as requiring compensation at the punitive rate for these excess hours.

The contentions of the parties are clear. The Petitioners assert that within the meaning of Rule 2 (b) while work in excess of the basic 205 hours per month can be required and compensated for at the pro-rata rate, until a total of 240 hours are worked, all hours worked, during such period in excess of 240, must of necessity be paid for at the punitive rate. It was asserted that Rule 2 (b) had reference only to the total number of hours worked, irrespective, and without regard as to whether or not the sum total of hours worked are comprised of both extra service and service on a regular assignment. It was further contended that none of the service here was Station Duty work, within the meaning of Rules 3 (b) relied upon by the Carrier.

The Respondent took the position that Rule 2 (b) contemplated payment at the punitive rate only in those instances where more than 240 hours were worked in the course of performing duties of a regular assignment, and not, as here, where the hours in excess of 240 were accumulated by service on both a regular assignment and extra work not connected with such regular assignment. It was asserted that Rule 3 (b) was a special rule and as such was controlling.

Rule 2 (b) provides for a basic month of 205 hours. Added service not to exceed an overall total of 240 hours may be required of an employe during this period and compensated for at the pro-rata rate. While provision is made for compensation at the punitive rate, on a minute basis for all hours in excess of 240 hours, the rule is silent as to whether the total number of hours shall be in conjunction with a regular assignment, or may include hours worked outside extra work) of such regular assignment.

Rule 3 (b) provides that all service performed which is other than service performed in conjunction with a regular assignment, and when performed

without loss of time on such regular assignment, will be compensated for at the pro-rata rate.

Thus we are confronted with 2 rules which the parties contend that are applicable. It seems to the Board that they are silent as to their specific coverage or limitation. Certainly Rule 2 (b) does not require or limit the excess hours to those performed in regular service. Neither does Rule 3 (b) specifically mention or limit its coverage and application to "Station Duty."

The record discloses that for years prior to the institution of this claim the accepted and established practice had been to pay for excess hours worked (as here) at the pro-rata rate.

Thus we find that the parties have placed their own definition and interpretation upon the confronting rules. Under like circumstances this Board has stated in numerous Awards that where an ambiguity exists as to the coverage of a rule, the Board will look to, and adopt the parties' definition and interpretation thereof.

On the basis of evidence of record a similar decision is warranted. This being true, this claim is without merit.

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 Employe involved in this dispute are respectively Carrier and Employe 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1957.