Award No. 8307
Docket No. CL-7909

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the Systems Committee of the Brotherhood that:

(a) The Bureau violated a rule of currently effective agreement with the Brotherhood dated September 1, 1949, in calculating the wage compensation due E. G. Herrin, Cotton Inspector, at Galveston, Texas, for services performed on Saturday, November 8, 1952, one of his assigned rest days.

(b) E. G. Herrin be paid the additional compensation due him representing a "call" or a minimum of three hours at pro rata rate for the services performed from 9:00 A. M. to 10:30 A. M. and a "call" or a minimum of three hours at pro rata rate for services performed by Claimant Herrin on the same day from 4:00 P. M. to 5:00 P. M.

EMPLOYES' STATEMENT OF FACTS: It is conceded the claimant E. G. Herrin is regularly assigned to Position No. 81, rate of pay $15.14 per day, Monday through Friday with Saturday and Sunday as designated rest days, Galveston, Texas. On Saturday, November 8, 1952 Mr. Herrin, the claimant, on one of his regular assigned rest days, was called to perform work from 9:00 A. M. to 10:30 A. M. On this same day, Saturday, November 8, 1952, the claimant was again called to perform service from 4:00 P. M. to 5:00 P. M.

The Bureau consolidated these two calls and compensated the claimant for only two and one-half hours overtime, representing actual time worked instead of a total minimum of four hours at time and one-half or six hours at the pro rata rate.

Employes' Exhibit 1 covers the information furnished by the claimant. The claim was declined as shown by Employes' Exhibit 3 with the remaining exhibits up to and including Employes' Exhibit 14 revealing the handling through the regular channels up to and including Mr. F. A. Piehl, Manager, Western Weighing and Inspection Bureau, and was not composed as evidenced by Mr. Piehl's letter of May 4, 1955, Employes' Exhibit 14.

POSITION OF EMPLOYES: (1) That Management violated a rule of our Agreement with the Bureau that governs the hours of service and

POSITION OF BUREAU: The contention advanced by the Brotherhood is that under the provisions of Rule 35 (a) when an employe is notified or called to perform work on two separate occasions, he is entitled to be compensated a minimum of three hours for each call, notwithstanding the fact that the rule involved is very specific in its language as applying to "work performed" and does not refer to the number of calls.

It is not our intention to burden your Honorable Board with a voluminous presentation in defense of our position. We say this for the reason that there has been before your Honorable Board two specific disputes involving the application of Rule 35 (c) of our Agreement, which, except for compensation, is no different in its application than Rule 35 (a), the rule involved in this dispute. In Award 5932 of Sept. 12, 1952, Referee Parker decided that dispute in favor of this Bureau. Also, in Award 6833, decided Dec. 3, 1954, Referee Messmore also decided that case in favor of this Bureau, and as stated, so far as the number of calls are concerned, there is absolutely no difference between the application of Rule 35 (a) or Rule 35 (c), therefore, it is quite obvious the Employes are making a supreme effort to obtain a sustaining decision, notwithstanding the fact that both Referees Parker and Messmore decided similar cases in favor of the Bureau.

We are at a loss to understand why, on May 19, 1954, our Exhibit No. 8, the Employes were willing to hold this dispute in abeyance pending a decision in Docket CL-6855, which was subsequently decided in Award No. 6833, and now have undertaken to present this dispute to your Honorable Board for adjudication.

We have stated, and the language in Rule 35, paragraphs (a) and (c) sustain our statement, that neither paragraph applies to the number of calls made but on the contrary is specific in its application to "work performed" and as the Claimant has been properly compensated for the work performed by him on November 8, 1952 we are convinced that you will in this case, as has been done in two previous cases, find that this claim is without merit and therefore must be denied.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are not in dispute and the issue is clearly presented. On Saturday, November 8, 1952, one of Claimant's regularly assigned rest days, he was called to perform work from 9 A. M., to 10:30 A. M. Later, on the same day, he was again called to perform work from 4 P. M., to 5 P. M. He was paid for the total actual time he worked—2½ hours—at the time and one-half rate. The claim is for the difference between what he was actually paid and pay for six hours at the pro rata rate, which Claimant contends is the proper payment for the service performed.

Both parties agree that Rule 35 (a) is controlling:

> "Employes notified or called to perform work, either before or after, but not continuous with their regular work period, shall be allowed a minimum of three hours at pro rata rate for two hours' work or less and, if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis."

Carrier contends that under this rule, the number of calls is immaterial, that the work performed is the governing factor and that Claimant was paid for all the work which he performed, at the specified overtime rate. Awards 5932 and 6833 of this Division are cited as having so interpreted paragraph (c) of Rule 35, which is, according to Carrier, similar in all material respects to paragraph (a).

We cannot agree with Carrier's interpretation. Rule 35 (a) specifically provides for the payment of three hours at pro rata rate for two hours' work or less. It then goes on to provide that "if held on duty" in excess of two

hours, the overtime rate will be paid. The payment of time and one-half is clearly conditioned upon the employe's being held on duty in excess of two hours, there is nothing ambiguous about this language. Claimant was not "held on duty" in excess of two hours on the day in question. He was called for 1½ hours in the morning and then released from duty; and in the afternoon, he was called again for one hour's duty and then released. Under the clear language of the rule, Claimant is entitled to three hours at pro rata rate for each of the two occasions on which he was called to perform work.

Paragraph (c) of Rule 35 and Awards 5932 and 6833 which are based upon that paragraph are clearly distinguishable from 35 (a) and the present case. 35 (c) provides for the payment of 5 hours and 20 minutes at time and one-half for four hours' work or less when called on Sundays or holidays. Then it provides that employes "worked in excess" of four hours will be allowed additional pay. Nothing in 35 (c) is conditioned upon an employe's being "held on duty", and the Board had no occasion to and did not consider the effect of the inclusion of that language in 35 (a) in reaching its decisions in the cited cases.

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 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 there was a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1958.