Award No. 12004
Docket No. MW-10091

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to pay B&B Foreman G. L. Rogers, Carpenters D. Mosley, J. H. Young, O. T. Cook, Helpers W. C. Carroll and L. Brooks at the double time rate for all work performed by the aforesaid employes which was in excess of the sixteen continuous hours each worked in the twenty-four hour period computed from 7:00 A.M. on March 2, 1956.

(2) Each of the employes named in Part (1) of this claim now be allowed the difference between the double time rate and the time and one-half rate for the sixteen hours between 7:00 A.M. on March 3, 1956 to 11:00 P.M. on March 3, 1956.

JOINT STATEMENT OF FACTS: B&B Foreman G. L. Rogers, Carpenters, D. Mosley, J. H. Young, and O. T. Cook, and Helpers W. C. Carroll and L. Brooks went to work 7:00 A.M., Friday, March 2 on maintenance work. At 11:00 A.M., they were called to Dawson Springs account failure of coal chute. They continued working on the coal chute, not counting meal periods allowed, until released at 11:00 P.M., Saturday, March 3. They were allowed 20 minutes for each meal period during this time.

These men were paid straight time from 7:00 A.M. to 3:00 P.M., March 2, time and one-half from 3:00 P.M. to 11:00 P.M., and double time from 11:00 P.M., March 2, to 7:00 A.M., March 3, and time and one-half from 7:00 A.M., March 3, until 11:00 P.M. same date.

The agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments and interpretations thereto are by reference made a part of this statement of facts.

POSITION OF EMPLOYES: The claimant employes are regularly assigned to a work week of Mondays through Fridays. Saturdays, Sundays and holidays are not scheduled or assigned workdays for the claimant employes. The regular starting time for the claimant employes is 7:00 A.M.

ceding the date of the claim we cannot agree. The rule does not so provide and it is not our prerogative to rewrite it. We must interpret the rule as we find it and if clear and unambiguous, which we think it is, apply it according to its terms, regardless of how the Carrier may have applied it on the property."

Third Division Award 5407:

"The pertinency of past practice is also dependent upon the construction given the Scope Rule of the Agreement. If the Scope Rule be vague and its coverage uncertain, past practice long acquiesced in is the best evidence of the parties' original intent and it is entitled to great weight. On the other hand, if the meaning of the rule be clear and certain, employe acquiescence in a contrary practice from now to kingdom come will not nullify its rights thereunder even though they may be estopped in their rights to retroactive pay for its violation (Awards 4457, 4129, 4054)."

Third Division Award 7150:

"The petitioner is simply attempting to secure through an award of this Division an agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, but to the contrary the carrier's action was clearly contemplated by the current agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involved request for change in agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties."

It is the position of the Carrier:

(1) There is an agreement between the parties to this dispute, (supra) governing the rules, rates of pay, and working conditions of the Claimants.

(2) Under this agreement, the Claimants are not entitled to the additional compensation which they claim.

(3) Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said agreement and to decide the present dispute in accordance therewith.

(4) The Carrier has conclusively shown that there is absolutely no basis for the claim of the Employes in this dispute, and therefore request its denial or dismissal without qualification.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

OPINION OF BOARD: In March 1956 Claimants held regular Monday-Friday assignments with a 7:00 A.M. starting time. Their rest days were Saturday and Sunday. During the course of their work on Friday, March 2, an emergency arose, as a consequence of which they worked forty continuous

hours, from 7:00 A.M. March 2 to 11:00 P.M. on March 3. For these hours they were paid as follows:

Friday	March 2	7:00 A.M. - 3:00 P.M.	8 hours at straight time
Friday	March 2	3:00 P.M. - 11:00 P.M.	8 hours at time and one-half
Fri-Sat.	March 2-3	11:00 P.M. - 7:00 A.M.	8 hours at double time
Sat.	March 3	7:00 A.M. - 11:00 P.M.	16 hours at time and one-half

The issue here concerns the 16 hours on Saturday, March 3 which, Petitioner contends, should have been compensated at the double time rate.

Cited rules provide:

"Rule 38 (a). Except as provided in Rule 32 and Sections (d) and (e) of this rule, time worked, preceding or following and continuous with the regular eight-hour work period (exclusive of meal periods), shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four-hour period computed from starting time of the employe's regular shift.

"Rule 38 (b). Employes required to work continuously from one regular work period to another in an emergency, shall receive time and one-half rate after the expiration of the first regular work period until relieved from such emergency work and pro rata rate for the remainder of time worked during the regular assigned work period, except that double time shall be allowed after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from the starting time of the employe's regular shift.

"Rule 38 (i). Employes worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks."

Additionally, in January 1951 the parties agreed (in a Letter Agreement) that on rest days and holidays double time would be paid after 16 continuous hours of work in any 24 hour period computed from the time an employe started on such days.

Petitioner contends that Claimants are entitled to double time pay for their last 16 hours of work since these hours followed and were continuous with the regular eight hour work period as specified in 38(a). It also argues that 38(b) is not applicable since it is confined to situations when employes work continuously from "one regular work period to another." Here, Petitioner notes, Saturday, March 3, was not a regular work period (it was normally a rest day) and Claimants, therefore, did not work from one regular period to another.

Carrier believes that Rule 38(b) and the 1951 Letter Agreement are controlling. It argues, in effect, (1) A rest day is 24 hours computed from the time the employe regularly starts work; (2) Claimants worked on their rest day and were properly paid under 38(i); (3) Rule 38(a) applies only to 24 hours of work, not to all time after 16 hours of continuous work; (4) 38(b) specifies that the pro rata rate is payable for work during the regular work period

and the Letter Agreement covers method of payment for the 24 hours of a rest day.

At the heart of this dispute lies the question of what this 38(a) phrase means: ". . . after sixteen (16) continuous hours of work in any twenty-four hour period computed from starting time of the employe's regular shift." What is being "computed"? The 24 hours or the 16 hours? The plain language and word order, in our estimation, relate this computation to the 24-hour period. This conclusion is buttressed by two Awards involving similar Maintenance of Way rules.

In Award 5156, where Claimants had been paid time and one-half (instead of double time) for the last seven hours of a 24-hour work stint extending from 7:00 A.M. on January 1, 1948 (a holiday) to 7:00 A.M. on January 2, the Board held:

> "Carrier contends that no provision is made for double time on Sundays and holidays under this rule. In this the Carrier is in error. The rule provides for double time after 16 hours' continuous service in any 24 hour period computed from the starting time of the employe's regular shift. This simply means that in computing double time for work in excess of 16 continuous hours of service, the **starting time of an employe's regular shift constitutes the starting point of the 24 hour period whether during regularly assigned days or otherwise. The 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 16 consecutive hours are worked and, in determining the beginning of the 24 hour period,** the starting time of his regular assignment will be used. The claim should be sustained." (Emphasis ours.)

In Award 5262, which reinforced the doctrine of Award 5156, Claimants (after putting in their regular 8:00 A.M.—5:00 P.M. stint) worked continuously from 10:00 P.M. on Saturday, March 20, 1948 to 7:30 A.M. on Monday, March 22. Sunday, March 21, was their normal rest day. Their claim for double time covering the hours Midnight (Sunday) to 7:30 A.M. (Monday), instead of time and one-half, was sustained despite the fact that Claimants were already at work when the sixteenth hour arrived. Moreover, although Sunday was not a regular workday, the Board held (as it had in Award 5156) that "in determining the beginning of the 24-hour period, the starting time of the regular shift will be used."

It may also be noted that in Award 5868, with a Rule similar to 38(a) here, the Board commented that if work is after and continuous with the eight-hour period, "it is compensable at the time and one-half rate, unless the time worked exceeds 16 hours in which case **the excess over 16 hours in any 24-hour period** is compensable at double time." (Emphasis ours.)

Given this interpretation of 38(a), Management's computations were correct. The Saturday work, starting at 7:00 A.M. (although it was continuous with Friday work), was performed on a new work day or, in the words of 38(a), in a new "twenty-four hour period." Since this period was normally a rest day, the proper rate of pay was time and one-half for the first eight hours (under 38(i)) and time and one-half for the second eight hours under 38(a). The claim, therefore, must be denied.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.