

Award No. 13612
Docket No. MW-14516

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
FLORIDA EAST COAST RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it refused to compensate Machine Operator D. H. Holder for overtime worked on August 1, 2, 3, 6, 8, 9, 10, 13 and 18, 1962 which totaled five hours and five minutes.

(2) Machine Operator D. H. Holder now be allowed five (5) hours and five (5) minutes' pay at his time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: During the period here involved, the claimant was regularly employed as machine operator on Extra Gang No. 4, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

Prior to quitting work each day, the claimant was required to either remove his machine from the track or to place the machine on a siding. On August 1, 2, 3, 6, 8, 9, 10 and 13, 1962, the claimant was required to work beyond his regular quitting time in order to perform this work. The claimant's foreman failed to include this overtime on his payroll report, thereby depriving the claimant of compensation for such overtime service which was specifically performed as follows:

Date	From	To	Time Worked	Overtime
8-1	6:00 A. M.	5:00 P. M.	10 hrs.	1 hour
8-2	6:00 A. M.	4:15 P. M.	9 hrs. 15 min.	15 min.
*8-3	6:00 A. M.	10:15 A. M.	4 hrs. 15 min.	15 min.
8-6	7:00 A. M.	5:10 P. M.	9 hrs. 10 min.	10 min.
8-8	7:00 A. M.	5:25 P. M.	9 hrs. 25 min.	25 min.
8-9	7:00 A. M.	5:10 P. M.	9 hrs. 10 min.	10 min.
*8-10	7:00 A. M.	11:20 A. M.	4 hrs. 20 min.	20 min.
8-13	7:00 A. M.	6:30 P. M.	10 hrs. 30 min.	1 hr. 30 min.
			TOTAL	4 hrs. 5 min.

* Four hours represents entire assignment for Friday - (Make-up time)

instant dispute since, as previously developed, Claimant Machine Operator Holder has been paid, in full, for all service performed in excess of his regular work assignment on the dates of claim. The fact that short periods of overtime from August 2 to August 10, 1962, were accumulated and allowed as one hour's overtime on August 14, 1962, is in no way violative of the schedule Agreement with the Brotherhood of Maintenance of Way Employees, which, as previously stated, simply requires that time worked over and above the regular assigned work period be paid at penalty rate in the manner prescribed by Rules 18 and 19 of that Agreement. This has been done, and Claimant Holder is entitled to nothing more.

For the reasons stated the claims are without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim presents a question of fact to the Board. The Claimant alleges that on certain dates he worked overtime. The periods of overtime claimed vary from ten minutes to one hour and thirty minutes, and all together total five hours and five minutes, the amount of the claim. The Carrier contends that Claimant was compensated at the overtime rate for all overtime actually worked, during the period of the claim.

This Board has no independent knowledge as to which assertion is in fact the one to be accepted in this case. We are unable to ascertain from the record that either party has substantiated the allegations advanced in behalf of the respective positions. Therefore, since the burden of proof is upon the moving party, we must deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 21st day of May 1965.