

Award No. 14089
Docket No. MW-13807

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY 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 compensate Work Equipment Operator G. A. Periman for all services (standby and active) rendered on October 7 and 8, 1961.

(2) Claimant G. A. Periman be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned to the operation of a clamshell, with a work week extending from Monday through Friday (rest days were Saturday and Sunday). The starting time of said assignment was 7:00 A. M.

On Friday, October 6, 1961, Roadmaster R. P. Johns instructed the claimant not to make his regular week-end trip home as his services would be required on Saturday, October 7th and on Sunday, October 8th to operate the clamshell in connection with the changing of conveyors used with the Speno Ballast Cleaner. In compliance with said instructions, the claimant remained in his outfit car and reported for work on October 7th at 7:00 A. M. and worked until 9:35 P. M. On October 8th, he again reported for work at 7:00 A. M. and worked until 3:00 P. M.

Upon receipt of the claimant's overtime slips for these two days, the Carrier advised him:

"Chicago, Illinois
October 18, 1961

Mr. G. A. Periman:

You submitted overtime slips for Saturday and Sunday, October 7th and 8th for 14 hours and 10 minutes, and 8 hours. These slips were changed to show your time on Saturday from 11 A. M. at which time you were told to be on duty to 9:35 P. M. when you completed work or 10 hours 35 minutes.

In this case Carrier has shown by a superabundance of evidence that its action is clearly authorized by the Agreement, namely Rules 41, 38, 37 and others cited, along with the Awards of the Third and Second Divisions of the NRAB cited above. On the other hand, the Petitioner at least while handling the claim on the property has steadfastly refused to even attempt to show or cite some rule, ruling, agreement, understanding, precedent, or authority, to support this wholly unwarranted claim. It is impossible for Carrier to know at this writing what basis Petitioner will attempt to conjure up in support of this claim in its submission to the Board, consequently it is necessary for Carrier to request 60 days in which to answer any submission that Petitioner may make in this case.

In summary, it must be remembered that the claim concerns work performed by claimant on his rest days. Rules 41 and 38 clearly specify how employees will be compensated for work performed on rest days. Claimant reported for work at 11:00 A. M. on Saturday as instructed, and at 9:00 A. M. on Sunday as instructed, and he was compensated for all time worked in strict and literal conformity with the provisions of Rules 41 and 38. In the light of these clear facts, the Carrier respectfully submits that there is no support for the claim, contractually or otherwise, and it must be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This record presents a sharp conflict in material and relevant facts which cannot be resolved by the Board on the evidence here made available by the parties.

The key questions of fact are:

- (a) Was Claimant instructed to report for work on his rest days at 9:00 A. M. and 11:00 A. M. respectively?
- (b) At what time on those days did he, in fact, report for work?

The Employees assert that Claimant was not instructed to report at any specified time but that he reported on claim dates at his regular starting time, 7:00 A. M.

The Carrier asserts Claimant was instructed to report and did, in fact, report for work at 9:00 A. M. and 11:00 A. M. on claim dates.

Neither party offered any admissible evidence of probative value tending to prove its contention. Absent such evidence, the Board may not properly resolve the conflict. (See Awards 9260, 9689, 13119, 13242.) Therefore, the substantive issue of whether the Claimant was properly compensated under agreement rules cannot be reached. The claim, accordingly, must be dismissed.

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

Claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1966.