



Award No. 16474

Docket No. MW-17055

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE 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 properly compensate Foreman C. Baungardner, Laborers W. J. Borders, C. J. Spalding, A. Cox, B. Harper, A. H. Bell, G. L. Brown and C. D. Garland for services performed in connection with a derailment at Broadhead, Kentucky on January 24, 25 and 26, 1966.

(2) The Carrier further violated the Agreement when, on February 4, 1966, it required the aforementioned employes to suspend work on their regular assignments from 8:00 A. M. to 3:30 P. M. without pay and then failed and refused to properly compensate them for services performed from 3:30 P. M. that date to 8:00 A. M. on February 5, 1966.

(3) Each of the aforementioned employes now be allowed the exact amount of monetary loss suffered because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions on Section No. 207, with headquarters at Louisville, Kentucky, with a work week extending from Monday through Friday (Saturdays and Sundays were rest days).

On January 24, 1966, a derailment occurred at Broadhead, Kentucky, approximately 125 miles from Louisville, Kentucky. At 4:00 A. M. that date, the claimants were called and transported by truck to the derailment location, where they worked until released at 10:00 P. M. that date. They returned to work at 6:00 A. M. on January 25, 1966 and worked until they were released at 8:00 P. M. that same date. They returned to work at 4:00 A. M. on January 26, 1966 and remained in service until they were returned to their headquarters station and released at 9:15 P. M. that date. Although the Carrier was contractually obligated to pay the claimants from the time that they were notified to report to the site of the derailment until the time that they returned to their headquarters (Rule 31), they were only paid for the time they were actually working.

double time rate, until they arrived at their headquarters station at 9:15 P. M., on January 26, 1966."

The claim was declined on March 28, Carrier's Exhibit BB as follows:

" * * * * *

Concerning the claim for work performed at Broadhead, this gang was given rest while at the wreck, furnished food and lodging and were paid at the required rate of pay, that is straight time for any work done during regularly assigned hours and overtime for any work done outside of regularly assigned hours and overtime rate for all over 8 hours of continuous work.

I do not see where this gang was paid improperly and am therefore declining your claim."

Copies of correspondence exchanged in connection with the claim are attached and are identified as Carrier's Exhibits AA through GG.

The claim was discussed in conference on September 28, 1966, at which time it was again declined. Nothing further was heard about the matter until notice was received that employees intended to file an ex parte submission in the dispute.

There is on file with the Third Division a copy of the current working rules agreement, and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: There are in effect two separate claims presented to this Board for adjudication, one being for January 24, 25, and 26 covering service performed at a wreck 122 miles from the Claimants' headquarters, the other for February 4th covering work performed by Claimants during a snow storm. The claim for January 24, 25 and 26 will hereinafter be referred to as Claim Number 1 and the February 4th claim as Claim Number 2.

Claimants were headquartered at Louisville, Kentucky with regularly assigned hours of 8:00 A. M. to 4:30 P. M. At 4:00 A. M. on January 24th, they were called to go to the scene of a wreck, 122 miles south of Louisville. When they arrived at the wreck on the morning of the 24th, they began work and worked until 10:00 P. M. and were relieved; on the 25th they again went to work, working until 9:00 P. M. at which time they were relieved; at 4:00 A. M. on the 26th, they again went on duty and after finishing their respective jobs, were transported to their headquarters at Louisville, arriving at 9:00 P. M. on the 26th.

They were compensated for such service as follows:

	Straight Time	Overtime	Double Time	Total
January 24 - 4:00 AM-10:00 PM	8	8	2	18
January 25 - 6:00 AM- 9:00 PM	8	7		15
January 26 - 4:00 AM- 9:00 PM	8	8	1	17
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The Organization alleges that Claimants up to the end of the 16th hour should be paid at the straight time and overtime rate, and all time thereafter should be paid at the double time rate, until they arrived at their headquarters station at 9:00 P. M. on January 26th. In other words, Petitioner alleges the Claimants should be compensated as follows:

January 24, 1966	4:00 AM to 8:00 AM	time and one-half
January 24, 1966	8:00 AM to 4:00 PM	straight time
January 24, 1966	4:00 PM to 8:00 PM	time and one-half
January 24, 1966	8:00 PM to 9:15 PM	
	on January 26, 1966	double time

The basis for such compensation they state is contained in Rule 31 and 30 (a) of the Agreement, both of which for ready reference are quoted below:

"RULE 31.

The basis of payment in Rule 30 (a) will also apply to time worked which is not continuous with a regularly assigned work period, with a minimum payment of 2 hours and 40 minutes at the time and one-half rate. Employees called for service on regular rest days and holidays and for work outside their regular assignment on regular work days, will be paid from the time they are notified to report until the time they return to their headquarters station."

"RULE 30.

(a) Actual work continuous with a regularly assigned 8 hour work period shall be paid for on the minute basis at time and one-half rate, with double time payment accruing after 16 continuous hours of work. All work within a regular 8-hour work period will be paid for at straight time rate, except that when double time payment begins, the employee will continue on double time payment until released.

Time traveling and waiting will not be considered as time worked, but will be payable under the rules covering that service.

The starting time of new employees temporarily brought into the service in emergencies will be the time they commence work or are required to report."

Carrier retorts that Claimants on January 24th, 25th and 26th were properly compensated in accordance with the provisions of Rule 30 (a) quoted *infra*. From 4:00 A. M. to 8:00 A. M. on January 24, they were paid for four hours at the overtime rate because they were working outside of their regularly assigned hours; from 8:00 A. M. to 4:00 P. M., they were paid for eight hours at the straight time rate; from 4:00 P. M. to 8:00 P. M., they were paid for four hours at the overtime rate; from 8:00 P. M. to 10:00 P. M., they were paid for two hours at the double time rate. They were then relieved until 6:00 A. M. on the morning of January 25th, being permitted to go to bed for 5 hours or more as provided by Rule 46 (c). This rule reads:

"RULE 46. TRAVEL SERVICE

46(a) Employees whose duties necessitate traveling, whether on regular assignment or in emergency or temporary service, will receive not less than 8 hours' straight time pay for each calendar day so engaged or held away from headquarters. For actual work beyond 8 hours, the overtime rate will be paid. Travel and waiting time outside of the 8 hours will be paid for at the pro rata rate. Travel time on track motor cars or road trucks is counted as time worked.

When meals and lodging are not provided by the railroad, actual necessary expenses will be allowed, except that employees customarily carrying mid-day lunch will not be paid for that meal. In this connection the following shall govern:

When employees living at home have notice at, or prior to quitting time the day before, that they will go out on motor car or train the following day, the noon meal the first day out will not be paid for by the railroad company. A man who spends the night at home and is not required to leave the same before 6:00 A. M. will be considered as living at home. This applies to employees of both the bridge and building and track subdepartments. With this exception, employees' actual necessary expenses on the trip will be allowed, including the noon-day meal on the first day out.

46 (b) In this service the working hours may necessarily be variable, and therefore payment will not be governed by the home station practice as to beginning time, regular assigned hours, etc.

46 (c) When, during such service, a man is relieved from duty and permitted to go to bed for 5 hours or more, such relief time will not be paid for. An employee relieved from duty for 5 hours or more will be furnished sleeping accommodations, if available, by the railroad company free of charge."

The compensation given Claimants for work performed on January 24th was properly made in strict compliance with Rule 30 (a).

On January 25th, they went to work at 6:00 A. M., two hours before their regularly scheduled starting time and were paid for 2 hours' overtime; at 8:00 A. M., pro rata time commenced and continued until 4:00 P. M.; from 4:00 P. M. to 9:00 P. M., when they went off duty, they were entitled to five hours at the overtime rate and were so compensated. They then went to bed until 4:00 A. M., the morning of the 26th. The compensation given Claimants for work performed on January 25th was again properly made in strict compliance with Rule 30 (a).

On January 26th, Claimants went on duty at 4:00 A. M., four hours before the regularly scheduled starting time and consequently were paid for four hours' overtime; at 8:00 A. M., the pro rata time began and they were paid at the rate until 4:00 P. M.; from 4:00 P. M. to 8:00 P. M., they were on overtime and from 8:00 P. M. to 9:00 P. M., they were on double time. Again we say that Claimants were properly compensated in accordance with the provisions of the applicable rule.

We therefore, in view of the foregoing, will deny Claim Number 1.

Insofar as Claim Number 2 is concerned, the facts relative to it are that on February 2 and 3, 1966, there was a heavy snow-fall in Carrier's Louisville, Kentucky terminal and switches, tracks etc. were covered with snow and ice. Claimants reported for their regular assignment at 8:00 A. M. on February 3 and worked continuously until 8:00 A. M., February 4. For this 24 hour period, Claimants were paid at the straight time rate, overtime rate and double time rate. When they reported back to work at 3:30 P. M. on the 4th, they were placed on the straight time rate for the next eight hours, and from 11:30 P. M. to 7:30 A. M. at double time.

Petitioner arguendo bases its contention on Rule 30 (e) which reads:

"Employees will not be required to suspend work during their regular daily assigned work period for the purpose of absorbing overtime."

The above, they state, expressly prohibits the Carrier from requiring an employee to suspend work during his regular assigned work period for the purpose of absorbing overtime. Claimants had worked continuously from 8:00 A. M., February 3, to 8:00 A. M., February 4th and, having worked in excess of 16 consecutive hours, were being compensated at their respective double time rates. They did not work their regularly assigned hours 8:00 A. M. to 3:30 P. M. on February 4, but did work on that day from 3:30 P. M. to 11:30 P. M. at straight time and from 11:30 P. M. to 8:00 A. M., February 5 at time and one-half. Petitioner argues that if Claimants had been permitted to work the full 8 hours of their regular assignment on February 4, they would have been compensated for that period of time and all other work continuous therewith at their respective double time rate. This latter basis for compensation is contained in Rule 30 (a).

Carrier states categorically that the Claimants requested to be relieved at 8:00 A. M. on February 4th. Petitioner on the other hand has provided us in their ex Parte Submission with what purports to be an affidavit signed by the Claimants in which they state that they were ordered by Roadmaster M. Hart to suspend work at 8:00 A. M. on February 4 and to return to work at 3:30 P. M. on February 4th. During the handling on the property, Petitioner also argues this latter point.

Rule 30 (e) quoted infra, is clear and unambiguous. Petitioner has charged Carrier with its violation. They state that they were required to suspend work by Roadmaster Hart. Carrier retorts to the effect that Claimants themselves requested to be relieved, but offers no proof for such an assertion. The burden of proof in this essential factor shifted to Carrier to defend against the allegation of the violation of the rule. They have not presented any evidence to sustain their position. Hence, we will sustain Claim Number 2 as presented.

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.

AWARD

Claim Number 1 — denied.

Claim Number 2 — sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.