



Award No. 18694

Docket No. TE-19019

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

CANADIAN NATIONAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Canadian National Railway Company (Great Lakes Region in the United States), T-C 5764, that:

1. Mr. A. Kovacs shall be allowed compensation at the time and one-half rate for service performed at Port Huron, Michigan, on March 19, 22, April 2, 5 and May 3, 1969, in lieu of the straight time rate at which he was paid.

2. Mr. R. J. Martin shall be allowed compensation at the time and one-half rate for service performed at Port Huron, Michigan, on each Tuesday from March 7, 1969 to April 16, 1969, in lieu of the straight time rate at which he was paid.

EMPLOYEES' STATEMENT OF FACTS:

(a) Statement of the Case

The instant dispute arose when two regularly assigned relief employees were diverted from their regularly assigned positions to work other positions. Because the hours of the positions to which the employees were diverted differed from the hours of the positions they were regularly assigned to work, the employees claimed the time and one-half rate for all hours worked outside the hours of their regular assignments as provided for in the Agreement. Carrier declined to allow payment for all such time worked.

The two claims appealed herein were timely filed and thereafter handled up to and with the highest officer designated by the Carrier to handle claims. They were discussed in conference on November 11, 1969 after which Carrier reaffirmed its previous declinations.

(b) Issue

Are the Claimants entitled to be paid the time and one-half rate for all hours which they worked outside the assigned hours of their regular assignments when they were diverted therefrom on the claim dates?

worked on his regular assignment in his work week, he will be paid for the time lost.

If the hours of the assignment to which diverted are not the same as his regular assignment, an employee diverted under this rule shall be paid the straight time rate for the hours he works which are a part of his regular assignment, and at the rate of time and one-half for the hours he works outside the hours of his regular assignment.

This Rule (c) does not apply to regular Relief Agents."

(e) Handling on The Property

Copies of the correspondence exchanged by the parties during the handling of this dispute on the property are appended hereto as T-C Exhibits 1 and 2.

(f) Authorities Relied On

None.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Mr. A. Kovacs' regular assignment involves working two (2) days at Port Huron, Michigan, United States, and one (1) day each at Sarnia, Strathroy, and Wyoming, Ontario, Canada. Mr. R. J. Martin's regular assignment involves working four (4) days at Port Huron, Michigan, United States, and one (1) day at Sarnia, Ontario, Canada.

The Carrier on various dates from 7 March, 1969 to 3 May, 1969 diverted the claimants from their regular swing assignments to positions working entirely in the United States. When diverted from their regular assignment in Canada covered by Agreement 7.1, which is a Canadian Agreement, the claimants were paid at the straight time rates of the position to which they were assigned in United States, unless such rate was lower than the rate of their regular position, in which case they would have received the higher rate. When diverted from their regular assignment in the United States covered by Agreement 7.12, which is a United States Agreement, the claimants were paid time and one-half for all time worked outside the hours of their regular assignment.

OPINION OF BOARD: Two separate Agreements between the parties are in existence in this dispute. Agreement 7.1 is the working Agreement between Carrier and the Organization for working conditions and rates of pay pertaining only to Canadian employees. Agreement 7.12 is the working agreement between Carrier and the Organization for working conditions and rates of pay pertaining only to United States Employees. Each of the named Claimants hold positions requiring work to be performed both in Canada and the United States on specified days of the week. Agreement 7.12 (U.S. Agreement) requires payment at the time and one-half rate when an employee is diverted from his regular assignment. Agreement 7.1 (Canadian Agreement) requires payment at the straight time rate on the diverted position, unless their regular position rate of pay was higher, in which case the higher rate will prevail.

From March 7, 1969, to May 3, 1969, Carrier diverted Claimants from their regular swing shifts to positions worked entirely in the U. S. When Claimants were diverted from their regular Canadian Agreements, they were paid at the straight time rate of the position to which assigned, unless such rate was lower, and in that event, they were paid at the higher rate of their regular position from which they were diverted. When diverted from their regular assignments in the U. S., Claimants were paid at the time and one-half rate for all time worked outside the hours of their regular assignment. The Organization contends that all work performed by Claimants on their diverted assignments was performed in the U. S., and, therefore, Agreement 7.12 (U. S. Agreement) prevails requiring payment to Claimants at the time and one-half rate. Carrier contends that the Agreement in effect at the situs of the work Claimants were diverted from prevails, and that, therefore, if Claimants were diverted from Canadian work, the Canadian Agreement calling for straight time pay rate governs the pay rate in this instance.

Carrier's contentions are not well taken for the reason that this Board is not vested with the authority or jurisdiction to interpret Agreements formulated, applied and enforced in foreign countries. Therefore, the only Agreement before us in this dispute is Agreement 7.12 (the U. S. Agreement). Agreement 7.12 is the only Agreement we have the right to consider in this dispute. Agreement 7.12 requires calls for the time and one-half rate of pay for employees who have been diverted from their regular assignment to another assignment. Therefore, this claim will be sustained.

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 violated.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 10th day of September 1971.