

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19676
Docket Number TE-19769

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication Division, BRAC)
PARTIES TO DISPUTE: (
(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Maine Central Railroad Company, T-C 5852, that:

Carrier violated Article 10, Paragraph (h) when they failed to properly compensate Mr. K. I. Strout time and one-half rates for the following days: Sunday, March 7th, Friday, March 12th, Saturday, March 13th and Thursday, March 18th, 1971, in accordance with the January 1st, 1951 Agreement. Carrier shall be required to compensate claimant at the pro rata rate.

OPINION OF BOARD: From the record before us it appears that notwithstanding numerous decisions of this Board, and decisions of the 40 Hour Week Committee, the parties, for a period of over twenty years, applied Article 10 of their Agreement in a manner differing from the accepted interpretation. Until recently, for unknown reasons, this different practice existed without dispute and did not generate claims or complaints for literal compliance with the terms of Article 10. In 1970 the claims were filed by the Organization seeking a correct application of Article 10. These claims resulted in a conference on June 24, 1971 which conference resulted in an understanding and agreement which provided:

"This will confirm our understanding and agreement reached in conference today in relation to Letter Agreement with former General Chairman Chandler dated November 16, 1964.

As agreed, effective July 1, 1971, a spare Employee on the Maine Central Railroad Company covered by the Agreement between the Maine Central Railroad and Portland Terminal Companies and Transportation-Communication Division BRAC -

who has covered a regular assignment for the full work week of five (5) days or who has worked the assignment less than five (5) days but is to continue on the assignment after the rest days, will take the rest days of the regular assignment. However, if a Spare Telegrapher

"covers a regular assignment less than the full work week of five (5) days and is released at the end of the work week, he will not be required to take the rest days of the regular assignment. He will be permitted to mark up on the Spare Board.

This is the same interpretation which has been in effect on the Portland Terminal Company since November 16, 1964 and will become uniform on both the Maine Central Railroad and Portland Terminal Companies."

The two claims which generated the above understanding and agreement were, by agreement, withdrawn. Upon consummation of the above-quoted June 24, 1971 agreement, the instant claim which involves dates prior to July 1, 1971 was not before Carrier's highest officer and was not withdrawn but was subsequently processed to this Board. The instant claim seeks payment identical to the method of payment the parties agreed would be followed "effective July 1, 1971". In our judgment for us to sustain the claim we would have to make the June 24, 1971 Agreement retroactive to Sunday March 7, 1971 - an act the parties themselves were unwilling to do. The fact of the matter is they made the June 24, 1971 Agreement and Understanding post-effective on July 1, 1971.

Accordingly, and under the particular circumstances involved in this dispute, the claim will be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.