

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20036
Docket Number MW-19931

Burl E. Hays, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Illinois Terminal 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 Track Foreman K. M. Oberkfell, Machine Operator R. D. Frey, Truck Driver R. L. Kress, Track Laborers D. L. Lawrence and P. D. Guthrie at their respective double time rates for work performed from 11:30 P.M. to Midnight on February 2, 1971.

(2) Track Foreman K. M. Oberkfell, Machine Operator R. D. Frey, Truck Driver R. L. Kress, Track Laborers D. L. Lawrence and P. D. Guthrie each be allowed the difference between what they should have been paid at their double time rate and what they were paid at the time and one-half rate for the work they performed from 11:30 P.M. to Midnight on February 2, 1971.

OPINION OF BOARD: The parties agree that the decision in this case rests on the Board's interpretation of Rule 29(a) of the Agreement effective December 1, 1966, which reads:

"Time worked preceding or following and continuous with a regular assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and one-half rate up to and including the sixteenth hour of continuous hours of work and at double time rate computed on the actual minute basis after the sixteenth continuous hour up to and including the twenty-fourth hour computed from starting time of the employee's regular shift. If held in continuous service after the initial twenty-four hour period, time worked in excess thereof will be computed on actual minute basis and paid at the rate of double time for all time worked until relieved. If called back within five (5) hours after being relieved it will be considered continuous service."

The Claimants' regularly assigned work period was from 7:00 a.m. to 3:30 p.m., with a thirty (30) minute noon-day meal period. On February 2, 1971, after working their regularly assigned hours, Claimants were called back and worked from 6:00 p.m. until 12:00 midnight. The foreman put in a timeslip for Claimants for that day for eight (8) straight time hours, five (5) hours and thirty (30) minutes at time and one-half rate, and thirty (30) minutes at double time rate. The thirty (30) minutes at double time rate was for the period between 11:30 p.m. and 12:00 midnight. Carrier elimin-

ated the thirty (30) minute double time request and paid Claimants at the time and one-half rate for the six hours from 6:00 p.m. until 12:00 midnight.

The Organization maintains that under the last sentence of Rule 29(a) double time should be paid at the end of the sixteenth hour or, in the instant case, for the thirty (30) minutes between 11:30 p.m. and 12:00 midnight. Carrier contends that under the rule an employee must have worked the full sixteen (16) hours before he is entitled to double time pay.

The parties agree that the thirty (30) minute noon-day meal period does not break the continuity of service provisions of this rule, and further agree that continuity of service is not broken when an employee is called back to work within five hours after being relieved.

The terms "continuous hours of work" and "continuous service" are used in the above quoted rule. In the Board's opinion these terms do not mean the same thing and cannot be used interchangeably. We are inclined to agree with the position of Carrier that "hours of work as provided for in the rule is a different criteria altogether from hours of service." The last sentence of the rule says:

"If called back within five (5) hours after being relieved it will be considered continuous service."

We consider this to mean that if called back within five (5) hours they will continue on the job without any break in their service, whether they worked any during that time or not. Having finished eight (8) hours on their regular assignment Claimants were called back and permitted to pick up where they left off, and were paid for the time they then worked at time and one-half rate.

In our judgment the rule does not contemplate payment of double time unless and until an employee has actually "worked" sixteen (16) hours -- at regular pay for eight (8) hours and then eight (8) hours at time and one-half rate.

In Award 5156 (Carter) the Board held: ".....double time accrues in any 24 hour period in which more than 16 consecutive hours are worked...." (Underlining ours). The same language is used in Award 5262 (Robertson).

It is the opinion of this Board that the Rule means actual work. In Award 10854 (McGrath) the same finding was made, and the Board said: "...it is our decision that the double time rates apply only after sixteen hours of actual work have been performed."

Claimants in the instant case did not work sixteen (16) hours on the date in question. In our judgment they are not entitled to the double time pay as claimed. Accordingly, 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:

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.