

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21352
Docket Number MW-21331

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line 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 Bridge Tender G. L. Pike in accordance with the Call Rule (Rule 26) for the services he performed not continuous with his regular work period on August 17, 18, 20, 21, 24, 28, 29, 30, 31, September 3, 5, 7, 10, 11, 12, 14, 19, 25, 26, 27, October 1, 3, 5, 9, 11, 16, 19, 22, 23, 27, 29, November 9, 10, 27, 30, December 11, 14, 17, 21, 1973, January 3, 9, 11, 25 and 31, 1974 (System Files 12-26 (74-3), 12-26 (74-5), 12-26 (74-6), 12-26 (74-7), 12-26 (74-8)).

(2) Bridge Tender G. L. Pike be allowed the difference between the amount he received and the amount he should have received under the provisions of the Call Rule for the services he performed on the dates referred to in Part (1) hereof.

OPINION OF BOARD: Claimant is employed as a Bridgetender with assigned hours of 8:30 A.M. to 11:00 A.M. and from 12:30 P.M. to 6:00 P.M., Monday through Friday. His lunch period is from 11:00 A.M. to 12:30 P.M. Claimant is frequently called upon to operate the bridge for the passage of boats outside of his regularly assigned hours and during his lunch period; it is for these hours that this claim is filed since there is a dispute as to the proper compensation.

The applicable rules involved herein provide:

"RULE 26 - CALL RULE

Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis."

"RULE 27 - OVERTIME

Section 1 - Time worked following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on the actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift.

"Section 2 - Time worked continuous with and in advance of the regular eight (8) hour work period: (a) if six (6) hours or less, will be paid at time and one-half rate until the beginning of the regular work period, and then at the straight-time rate during the regular eight (8) hour work period; (b) if in excess of six (6) hours, the time and one-half rate will apply until the double-time rate as provided for in Section 3 of this Rule becomes applicable, or released for eight (8) hours or more. Such release, upon completion of six (6) hours or more actual work, will not constitute a violation of Section 6 of this Rule.

* * * * *

Section 4 - * * * * *

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime."

This is the third dispute before this Board between these same parties involving payments to bridgetenders for work outside of their regular hours. The first dispute involved service during the meal period, Award 14070, in which we found that the employe should receive a call for such work, contrary to Carrier's position. The second dispute, Award 18090, involved a situation in which Claimant responded to a "call" for service within an hour and a half of his regular starting time. In that case Carrier argued that Claimant was only entitled to overtime pay for the time period prior to the regular starting time. We held that a call should be paid and Carrier dissented vigorously and now alleges that the decision in question was palpably erroneous. The current dispute involves a series of claims which fall into two categories: instances in which Claimant was called upon to open the bridge less than two hours and forty minutes prior to the regular starting time (identical to the facts in Award 18090); and secondly, instances in which he was called upon to open the bridge more than once during the same two hour and forty minute period. The second situation is exemplified by the claims for August 31st when Claimant was called upon to open the bridge from 12:35 A.M. to 12:55 A.M. and again from 2:08 A.M. to 2:25 A.M. In that instance Petitioner seeks two calls and Carrier insists that one call is all that is required.

Carrier argues that Award 18090 was in palpable error in sustaining a claim for a call when the claimant had been instructed to remain on duty under pay in accordance with Rule 27 Section 2. Carrier also contends that the agreement contains no provisions requiring an automatic release from duty each time a boat passage has been completed nor does it require a payment of additional calls within the same two hour and forty minute period. Carrier relies in part on the principle that it has the right to direct its work forces as long as it is in conformity with the law and the agreement. Carrier insists that the payment of a call within a call would be in violation of the agreement proviso contained in Rule 27 prohibiting overtime on overtime. The Carrier's position can be summed up by the Assistant Vice President-Engineering's comments:

"I am sure you understand that when a bridgetender is called he can be held for the full two hours and forty minutes, and that we do not intend to pay additional calls within this period should a second or third boat appear. We have not up to this time strictly required a bridgetender to stay on the bridge during the full two hours and forty minutes, but, if claims of this nature continue, we will be forced to issue such instructions."

Carrier also asserts that it issued standing instructions concerning this type of service by bridgetenders and further it has every right to expect service for all time for which it pays. Carrier also cites two awards, 6497 and 13980 upon which it relies in part. They will be discussed hereinafter.

Petitioner argues that the issues involved in this dispute have been disposed of by this Board in the two awards cited first above. Further, it is contended that the conditions set forth in the Call Rule and Overtime Rule are clearly distinguishable and in all the instances herein the Call Rule is applicable. Petitioner also asserts that there are no contrary past practices or instructions issued to the bridgetenders, contrary to Carrier's contention.

First, with respect to the two awards cited in particular by Carrier, both are distinguishable from this dispute. Award 6497, while holding that the completion of a task which an employe has been instructed to perform does not automatically release him from duty, also states that there were standing instructions for the claimant to report to work early, as distinct from the facts herein. Similarly in Award 13980 Claimant was instructed to stay on the job "... and protect the interlocking plant."

We find no facts in the record to support Carrier's assertion that there were standing instructions to bridgetenders to remain on duty prior to their regular starting time and similarly no evidence with respect to any practices prevalent on the property. There was an "interpretation" of the rules in question issued by Carrier dated January 17, 1974 which cannot be construed to constitute an instruction. The interpretation itself is a unilateral pronouncement of questionable validity.

In our judgment, the Call Rule is clearly applicable to the circumstances involved herein. Calls are used to require service for unforeseen or unpredictable events - outside of regularly assigned hours, as distinct from overtime which is interpreted by the Agreement herein to be for time worked continuous with (both before and after) the regular eight hour assigned work period. With respect to the "calls" which Carrier desires to pay overtime for, immediately prior to the starting time of Claimant, there is no indication in the record that Carrier required Claimant to remain on duty for the entire period up to his regular starting time. On the contrary, it is evident that Claimant returned to his home after performing the required work. It would indeed be difficult to ignore the distinction of continuous work versus what is evidently the fact herein. Hence, that situation warrants a call pursuant to Rule 26.

With respect to the alleged pyramiding of overtime, we also find that Carrier is in error. We need not dwell upon the historic reasons for the provisions for minimum calls which relate to the hardships imposed on employees for leaving their homes at the behest of employers at all hours except to indicate that such provisions have long been accepted by this industry. There is neither a literal nor philosophic reason for the exceptions to the rule desired by Carrier in this dispute. Although we sympathize with the economic logic of Carrier's position and with the equity consideration, such interpretation is not within our province. Carrier may of course seek changes in the rule or require continuous service for the duration of the call period, as it wishes. But, we must sustain the claim based on the clear language of the Rule in addition to the prior determinations.

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;

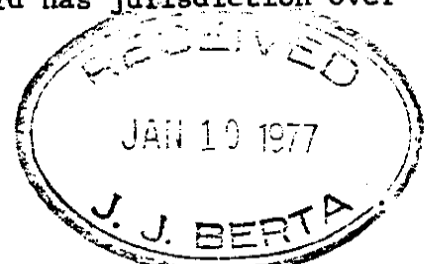
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.