

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21631
Docket Number CL-21546

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8044, that:

1. Carrier violated Rule 36, among other rules of the Agreement, when it failed and refused to pay Crew Clerk H. E. Keeney, Yeoman Yard, Tampa, Florida, for loss of earnings when it caused and required Crew Clerk H. E. Keeney to attend court as a witness in behalf of Carrier, November 6 and 7, 1974.

2. Carrier shall be required to compensate H. E. Keeney an additional eight (8) hours at one and one-half times the pro rata rate of the position of Crew Clerk, Yeoman Yard, Tampa, Florida, November 6 and 7, 1974, for the violation set forth above.

OPINION OF BOARD: Claimant is regularly assigned as Crew Clerk 3:00 p.m. to 11:00 p.m., Tuesday through Saturday.

Pursuant to Carrier's instruction, Claimant attended court as a witness on November 6, 7, 8, 12 and 13, 1974.

The Employee asserts that he "stood to work an additional eight (8) hours Wednesday, November 6, 1974, and Thursday, November 7, 1974 as crew clerk at time and one-half the pro-rata rate" and submits a claim for 8 hours of overtime compensation for each day, citing, particularly, Rule 36(a) and (b):

"RULE 36 - ATTENDING COURT, INVESTIGATIONS AND HEARINGS

(a) Employees taken away from their regular assigned duties, at the request of the Management, to attend court or appear at investigations or hearings at their headquarters, as witnesses for the carrier, will be allowed compensation while so in attendance equal to what they would have earned had they remained on their job.

"(b) Employees so used, at their headquarters, before or after regular assigned hours on regular assigned work days, or on a regular assigned rest day or one of the designated holidays, will be allowed compensation, at pro rata rate, for the actual time attending court, investigation or hearing, with a minimum of two (2) hours. Employees so used at a point away from their headquarters, will be allowed a total of eight (8) hours' compensation, at pro rata rate, in each twenty-four (24) hour period for the actual time attending court, investigation or hearing, and, in addition, will be furnished necessary transportation and necessary actual expenses."

From our review of the handling of the dispute on the property, we are not convinced that Carrier concedes that Claimant would have worked overtime on the two days in question. See, for example, March 11, 1975 denial in which the Assistant Vice President refers to "overtime for which Claimant would allegedly have been eligible." But, in any event - and assuming that the Employee might have worked overtime had it not been for the court appearances - we cannot conclude that the Employee received less than the amount to which he was contractually entitled.

Claimant was paid - pro rata - for actual time spent attending the court sessions, which was in excess of normal duty hours.

Rule 36(b) speaks in terms of compensation at pro rata rates for certain time which might, in other circumstances, be considered as premium time. That is illustrative of the fact that the Rule in question is a specific Rule and we must consider it as such. See, for example, Third Division Awards 18143 and 18410 and Second Division Award 7253.

The final product of the application of a special rule may create "harsh results" (Second Division Award 7253) or, at least, "different" results - see the December 6, 1974 comments of the Organization's representative:

"The clerks committee...finds that while the Carrier has been generous in paying...at a pro rata rate for more hours than he was actually on duty..."

In the final analysis, the end product must yield to the agreement of the parties. We have considered Special Rule 36 at length, and are unable to find that it supports the conclusions urged by Claimant's representative.

Stated differently, we find nothing to suggest that the parties agreed to reimburse employees for lost overtime opportunities at a premium rate while attending court, even though they may have agreed to payment for more than a regular work day - at pro rata rates.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.