

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21885
Docket Number MW-21424

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Texas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to compensate Trackmen Ciriaco G. Nieto, Epifanio Guardiola, Florencio F. Vasquez and Javier I. Longoria for standby service rendered by each from 1:00 PM to 3:20 PM on November 17, 1974. (File TCT-2)

(2) Each of the above-named employees now be allowed 2 hours and 20 minutes' pay at their time and one-half rate.

OPINION OF BOARD: On the claim date, a rest day, each of the Claimants was called at 7:00 a.m. to work a derailment. They worked continuously until 1:00 p.m. (except for lunch break).

According to the time claim filed by one of the Claimants:

"Track Foreman told these men to go home and wait for him to call them back to work as they were expecting to get the Hook Truck to rerail some cars which were on [sic] ground. Track Foreman told his men not to leave their homes and wait for his call..."

Claimants were called and reported at 3:20 p.m. They worked until 6:00 p.m. and were released. They received 8 hours 40 minutes pay. This is a claim for pay from 1:00 p.m. to 3:20 p.m.

Carrier asserts that the Claimants were released from work at 1:00 p.m. and told that if a rented wrecker truck was available and used they would be called again. There is no statement in the record, however, by the Track Foreman himself as to what he told the Claimants. Under the circumstances, we hold the Claimant's statement to be unrefuted.

Rule 1 of Article XVII of the agreement provides in pertinent part:

"Time worked or held on duty on rest days, and the following holidays...shall be paid for at the rate of time and one-half, with a minimum of two (2) hours and forty (40) minutes for two (2) hours work or less at time and one-half rate as provided for in Rule 1 of Article XIX."

In Second Division Award No. 3955 the Board had occasion to consider the meaning of the term "time held on duty." The Board said:

"On the otherhand, the term 'time held on duty' ordinarily refers to time spent by an employe in the interest of the employer and his business, even though part of the time may be spent in idleness, provided the employe is appreciably restricted in his movements or otherwise subject to the employer's control during such time. See: Missouri, Kansas & Texas Railway Company of Texas v. United States, 231 U.S. 112,119; 34 S. Ct. 26, 27 (1913). However, if an employe who is on call or standby is not confined to his home or to any particular place but may come and go as he pleases, provided he leaves a message or telephone number where he can be reached, the time so spent is not usually regarded as 'time held on duty'." (Emphasis added).

Applying the principle enunciated in Award No. 3955 to the unrefuted statement in this record that Claimants were sent home and instructed to stay there until called, the Board shall sustain the claim.

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

Award Number 21885
Docket Number MW-21424

Page 3

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.