

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22254

Docket Number CL-21981

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8356) that:

1. Carrier violated the Rules Agreement, effective June 1, 1975, specifically Rule 39 NOTIFIED OR CALLED, when it telephoned Mr. L. A. Garside, at home while he was on one of his assigned rest days and required him to furnish information vital to the operation of the railroad.

2. Mr. L. A. Garside should be allowed a minimum of five (5) hours and twenty (20) minutes at the time and one-half rate of his position of Tape Room Librarian for June 17, 1975.

OPINION OF BOARD: The Claimant was employed as a Tape Room Librarian in the Electronic Data Processing Center, with certain designated hours of duty and designated days off (Tuesdays and Wednesdays). At approximately 3:00 p.m. on one of the Claimant's days off, the Carrier contacted the Claimant by telephone at his home and requested Claimant to provide information as to the location of certain magnetic tapes which were needed for a payroll rerun.

Thereafter, the Claimant submitted this claim for 5 hours and 20 minutes, at time and one-half, alleging a violation of Rule 39:

"(a) Except as provided in Section (c) of this rule, employees notified or called to perform work not continuous with, before or after the regular work period shall be allowed a minimum of three (3) hours pro rata for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half shall be allowed on the minute basis.

"(b) Employees notified or called to perform work on their designated rest days and specified holidays shall be allowed a minimum of five (5) hours and twenty (20) minutes at the rate of time and one-half for five (5) hours and twenty (20) work or less, and if held on duty in excess of five (5) hours and twenty (20) minutes, time and one-half shall be allowed on the minute basis.

(c) Employees who have completed their regular tour of duty and have been released, and required to return for further service, may, if the conditions justify, be compensated as if on continuous duty."

The Carrier does not dispute that the phone call was made and, although in the initial stages of the dispute, the Carrier took the position that the phone call was prompted by the fact that the Claimant had misplaced the tape files in question, nonetheless, the basic defense presented here is premised upon the fact that the Claimant "did not perform any work, but was called to provide information required to locate two tapes."

A resolution of the dispute centers around whether or not an employee performs "work" when he is telephoned at home by his Supervisor, and is required to furnish information of vital interest to the employer. In urging that we sustain the claim, the Employees rely upon Award No. 5 of Public Law Board No. 114, which held:

"The fact remains that the services of the employee were utilized and he is entitled to be paid. The employees have shown that the services of the claimant were used."

The cited Award is quite short (consisting of only two (2) paragraphs) and does not detail the full factual circumstances so that we are unable to assess its precedent value to the dispute before us. In any event, there are other Awards which have reached a contrary conclusion and, of course, they are relied upon by the Carrier.

One of those Awards (Third Division No. 21652) decided in August of 1977 considered a similar circumstance in which a Carrier contacted an employee at home and interrupted his sleep so as to request certain information. While the penalty time specified in

the contract may have been different, the operative provision was the same, i.e., "employees notified or called to perform work not continuous with..."

The Referee in Award 21652 denied the claim and, in essence, stated that answering a telephone to give information to the Carrier does not come within the rule of the Agreement. That Award cited Award 6107, which denied a claim when an employee had been actually notified to report to work to perform service, but was then instructed (2½ hours before his reporting time) that he was not required to report. In considering the case, the Referee noted that:

"It is unquestioned that the employee was inconvenienced, but the rule is definite. It does not pay for this type of inconvenience..."

Of course, it should be understood that each case of this type must be considered on its own merits, and in each instance it is incumbent to search the record to determine whether or not the Carrier required the employee to perform certain work. In this dispute, we are unable to make such a determination and we will deny 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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.

