

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22492
Docket Number MW-22401

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

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

(1) The Agreement was violated when Machine Operators R. Thompson, C. O. Scott, D. Brown, M. Hawkinson, I. M. Harper, A. Anderson, R. Smith, H. W. Barch, M. Humphrey, O. S. Whitt, D. W. Banks, R. A. Leeper and D. Dickson were compensated at their respective straight-time rates instead of at their respective time and one-half rates for the 9th and 10th hours each worked on certain dates during October and November, 1976 [System Files 11-P-544/L-126-1583 and 11-P-547/L-126-1581/.

(2) Each of the above-named claimants now be allowed the difference between what they should have been paid at their respective time and one-half rates and what they were paid at their respective straight-time rates for the overtime service each rendered during the above-mentioned claim period."

OPINION OF BOARD: Item 7 of a February 19, 1976 Agreement provides for twenty (20) straight eight (8) hour work days at the pro rata rate, thus accumulating 8 days off to afford the members of the gangs an opportunity to visit their families.

In October and November, 1976, the employees involved agreed to work sixteen (16) straight days of ten (10) hours each, followed by eight (8) days off. This arrangement - which was contrary to the agreement - was not agreed to by the Organization.

In reply to Carrier's assertion that the employees desired to work the longer days, the Organization reminds us that the employees cannot abrogate or change an agreement, and that we lack powers of "equity and justice." See Award 20844.

The claim seeks time and one-half for the two hours worked each day over and above the normal 8 hours per day. The employees received straight time for the two hours per day and thus, seek one-half pay per hour for the 9th and 10th hour.

Carrier did not question the timeliness of the claim while the matter was under consideration on the property and thus, its attempt to rely on that defense in its Submission to this Board is not appropriate.

There seems to be no question that the employees agreed to the altered schedule and thus, we can readily understand Carrier's contention that the employees waived their complaint and that additional payment amounts to "unjust enrichment." Indeed, it does give us pause to honor these claims on behalf of the employees who voluntarily agreed to the violation. But, for us to invoke the concepts espoused by the Carrier would require us to apply equitable considerations (which is clearly beyond our authority) and ignore the well established principles which dictate that individual agreements do not replace collectively bargained agreements. See Award 21048.

There is a contractual basis for premium pay for time worked in excess of eight hours per day.

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1979.