

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26511
Docket Number MW-26012

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Seaboard System Railroad

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

1. The Agreement was violated when the members of Section Force 5905 were not called to perform overtime service on their assigned section territory on November 11, 1982 and the Carrier instead called and used Section Force 5904 (System File C-4(36)-SF5905/12-30(83-31) G2).

2. Because of the aforesaid violation each member of Section Force 5905 assigned to that force on November 11, 1982 shall be allowed five (5) hours of pay at their respective time and one-half rates."

OPINION OF BOARD: This Claim came about after Section Force 5904 requested permission to work the November 11, 1982, holiday and then be allowed to take off Friday, November 12, 1982. This request was granted. However, on November 12, Section Force 5904 reported for work. Its Section Foreman contended that there had been a misunderstanding and, in fact, the Gang wanted to substitute the Friday after Thanksgiving for working on November 11, 1982. The Carrier's Roadmaster granted the request and agreed that the Gang could take off the Friday after Thanksgiving. He allowed the gang to work on November 12.

The Claim here, which was presented on December 7, 1982, is for time and one-half pay in addition to what the Claimants have already received.

The Board has closely reviewed the entire file and has considered the evidence properly before us. We find no Rule that would have prohibited the Carrier from acting favorably upon the request of its employees. Moreover, while there are numerous and varying contentions of both parties, concerning construction of the various Rules and what did and did not occur, the Board concludes that little purpose would be served in addressing these matters at this point, given our basic conclusion cited above. Accordingly, in arriving at our decision, we have given particular weight to the fact that the Claimants themselves asked for, and were granted, a substitution for the days worked. Whether this should or should not have been done, or whether there was a legitimate understanding of which day would be substituted for which, is not material.

Therefore, in view of all of the foregoing and the particular circumstances of this record, we find that the Carrier's proposal to allow payment of five hours straight time to each Claimant, pursuant to the conditions stated in its letter of October 21, 1983, to the General Chairman, is a fair and equitable resolution of this Claim and we so hold.

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

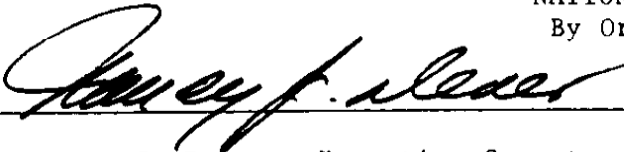
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.