

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26707

Docket Number MW-26237

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Elgin, Joliet and Eastern Railway Company

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

1. The Agreement was violated when Drawbridge Tender J. Guzman was compensated at his straight-time rate instead of at his time and one-half rate for the service he performed on August 6, 7, 13, 14, 20, 21, 27 and 28; September 11, 17, 18, 24 and 25; October 1, 2, 8, 9, 15, 16, 22, 23, 29 and 30 and November 5 and 6, 1983 (System Case TM-8&14-83/SC-13&15-83).

2. Drawbridge Tender J. Guzman shall be allowed the difference between what he should have been paid at his time and one-half rate and what he was paid at his straight time rate on the claim dates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The regularly assigned bridge tender on South Chicago Bridge No. 710 worked the 11:00 P.M. to 7:00 A.M. shift, Monday through Friday, with Saturday and Sunday as rest days. On the dates cited in the Statement of Claim the Carrier called the Claimant, who was a full-toughed drawbridge tender, to perform part-time service. All dates were Saturdays and Sundays and the Claimant worked the 11:00 P.M. to 7:00 A.M. shift. For this he was paid the straight-time rate.

On October 5, 1983, and on December 7, 1983, the Organization submitted Claims covering the dates of the time-period cited in the Statement of Claim. Both Claims are treated here as one. The Claim contends that the Carrier was in violation of Rule 53(a) and (c) of the Schedule Agreement when it paid the Claimant at the straight-time rate rather than at overtime rate.

The Rule at bar reads, in pertinent part, as follows:

"Rule 53 (a):

Employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one half rate for two (2) hours and forty minutes of work or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on minute basis.

Rule 53 (c):

Employees laid off in reduction of force and retaining seniority under the provisions of Rule 36 when called back temporarily for special service will be compensated as follows:

When working the full hours of assignment on the gang with which employed will be paid eight (8) hours at pro rata rate.

When called for irregular or part-time service outside of regular work period, will be paid as per paragraph (a) of this rule."

It is position of the Carrier that the same shift on rest days is part of the regular work period of a bridge tender position. It is the position of the Organization that the same shift on rest days is outside the regular work period.

The Bulletin for the bridge tender position (Bulletin 7888, dated June 20, 1983) states the following with respect to what the Bulletin calls hours of service:

". . . 8 hrs. daily except Sat., Sun. & designated holidays 11:00 PM - 7:00 AM . . . ." (emphasis added)

Rule 53(c) of the Schedule Agreement uses slightly different but synonymous language to describe what the Carrier's bulletin calls hours of service. The Contractual Language used is full hours of assignment. The contract states that when a furloughed employee is called back temporarily for special service the employee will be paid at the pro rata rate when working the full hours of assignment. This can mean, according to reasonable rules of language construction, nothing other than the hours of service assigned to the bulletined position. When working outside of these full hours of assignment, the employee on callback must be paid in accordance with Rule 53(a), which is the overtime rate.

When framing their understanding with respect to pay rates for employees on call-back, the parties to the contract used two different phrases: "full hours of assignment . . . ," as noted above, and also "regular work period . . . ." When applying these two different phrases to the circumstances at bar, the Board is presented with neither evidence nor logic to the effect that these phrases too are not synonymous. For this Board to conclude otherwise would place it beyond its authority which is limited to the interpretation of contracts "as written." (First Division Award 21459; also Third Division Awards 6695, 21697).

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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.