

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it failed and refused to properly compensate Foreman T. Panoc and Trackmen M. Damiano and W. Mumenthaler for the overtime work they were called to perform on October 23, 1983 (System File NEC-BMWE-SD-813).

(2) The claimants shall each be allowed an additional four (4) hours of pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants are members of a gang headquartered at Paoli, Pennsylvania. On Sunday, October 23, 1983, (a designated rest day) the Carrier required Claimants to report for duty to provide flagging protection for contracting forces. Claimants were released after being held by the Carrier for four hours because the contracting forces failed to appear at the job site. Claimants were compensated by payment of four hours of pay at their respective time and one-half rates.

The Organization argues that Claimants were entitled to payment for four more hours at their time and one-half rates. The Carrier asserts that Claimants were properly paid.

Rule 54 states:

"PROTECT SERVICE ON HOLIDAYS OR ON THE EMPLOYEE'S
ASSIGNED REST DAY

Employees required to report for 'Protect Service' on holidays, or on Sundays, when Sunday is an assigned rest day, shall be allowed a minimum of eight (8) hours at the rate of time and one-half."

Rule 53 states:

"CALLS

(a) Employees notified or called to perform service outside of and not continuous with the regularly assigned working hours, shall report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half, if held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

(b) The time of employees so notified to report at a designated time to perform service outside of and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at headquarters. The time of employees so called to perform such service immediately shall begin at the time called and end when they are released at their headquarters."

The clear language of Rule 54 requires the entry of a sustaining Award. Here, Claimants were required to report for protect service on an assigned Sunday rest day. By the language of that Rule, they were entitled to eight and not four hours at their time and one-half rates.

The Carrier's argument that in this case Claimants were advised to report for pre-determined overtime to afford flagging protection for contractor forces thereby bringing them within the provisions of Rule 53 and not Rule 54 is without merit. The distinction that the Carrier seeks to make between pre-determined overtime and being called to provide protect service on a standby basis is not supported by a reading of the Rules. Rule 54 is very specific and mandates eight hours of pay at the time and one-half rate when an employee is "required to report for 'Protect Service'." In this case, Claimants were required to report for such service, thereby bringing them within the provisions of Rule 54 and not Rule 53.

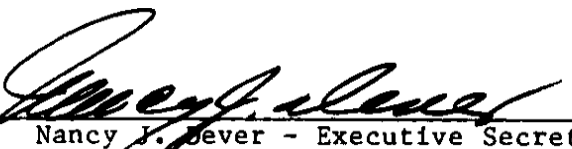
In light of the above, we do not address the parties' arguments concerning whether a pro-rata or overtime payment should be made in this case. Our decision requiring the payment of eight hours at the time and one-half rate is mandated by the specific provisions of Rule 54 and not general provisions concerning overtime.

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 28th day of January 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 26777, DOCKET MW-26537
(REFEREE BENN)

The Majority erred in finding "protect service" as contemplated by Rule 54 equivalent to predetermined flagging overtime. As was fully developed in the on-property handling, "protect service" pursuant to Rule 54 was taken verbatim from the December 16, 1945 Pennsylvania Railroad Company - Maintenance of Way Employees Agreement, and never governed flagging for contractors on overtime. In its long years of existence, the Rule has been used very infrequently, as it is only applicable to employees required to report for duty, without specific assignment, to guard special train movements and simply be available to quickly respond to any trouble which might arise in the course thereof. Indeed, Decision No. 357 of the Pennsylvania Railroad - Long Island Railroad - Maintenance of Way Board of Adjustment confirms and is evidence of that fact. The Majority has overlooked the significance of that Decision and the historical application of the Rule in question.

Further, in the context of overall contract construction, if the "protect service" Rule were intended to govern normal flagging overtime assignments on holidays and Sundays, then such Rule would not have been included in the Schedule Agreement as an exception to the rules governing the normal payment of overtime. The distinction of Rule 54 from regular overtime assignments, such as that concerned in this case, was established on the property.

For these reasons, we dissent to the ruling of the Majority

Carrier Members' Dissent to
Award 26777, Docket MW-26537

in this case and must state, for the record, that it should
not be considered precedential.

Michael C. Lesnik

M. C. Lesnik

M. W. Fingerhut

M. W. Fingerhut

Robert L. Hicks

R. L. Hicks

P. V. Varga

P. V. Varga

J. E. Yost

J. E. Yost

2/25/88