

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

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

(1) The Agreement was violated when Cook E. Richardson was not called to perform overtime service on his assigned position on December 8 and 9, 1984 (System File NEC-BMWE-SD-1214).

(2) Because of the aforesaid violation, Cook E. Richardson shall be allowed an additional twenty-four (24) hours of pay at his one-half time rate."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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.

Claimant was employed by Carrier as a Cook on a Ditching Gang headquartered in camp cars near Wilham, Connecticut. His normal workweek was Monday through Friday. On Saturday, December 8, and Sunday, December 9, 1984, the Ditching Gang worked overtime. Carrier did not call Claimant to perform the overtime cooking duties, but instead allowed the Cook from the Tie Gang to cook for the Ditcher Gang. He worked 24 hours' overtime.

A claim was filed contending that Claimant should have been assigned to cook for his crew on an overtime basis. A request for 24 hours' pay at the punitive rate was made. Carrier paid the claim on a pro rata basis, but denied the punitive rate.

The Organization thereupon progressed the portion of the claim requesting punitive pay to the Third Division. The Board is not empowered to pass judgment on the merits of the case, but is only authorized to decide whether the straight time rate or the punitive rate should be paid.

The issue of whether an employe should receive time and one-half for overtime work lost or only straight time because no actual work has been performed has been argued by the parties for many years. Hundreds of decisions on the subject have been rendered by all Divisions of the Board and numerous Public Law Boards. The cases have been decided both ways.

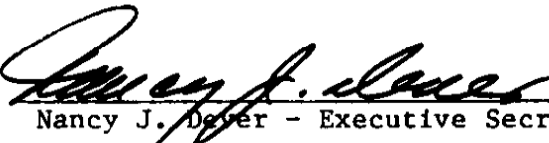
A review of the record in this case, however, reveals that on AMTRAK properties, the prevailing practice is to pay straight time for missed overtime work. We can find no basis in the record to support a contrary opinion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.