

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it improperly compensated Track Laborer D. F. Setniker for the overtime service he performed from 3:00 P.M. to 11:00 P.M. on March 5, 1985 and from 3:00 P.M. to 11:00 P.M. on March 6, 1985 (Claim J-27-85).

(2) Because of the aforesaid violation, Track Laborer D. F. Setniker shall be allowed an additional sixteen (16) 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 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.

On March 5 and 6, 1985 Claimant, a furloughed Track Laborer, was called out and worked from 3:00 PM to 7:00 AM, each date, for snow cleanup. He was paid at the straight time rate for the first eight hours worked on each date and time and one half rates for the second eight hour period. While on duty, between 3:00 PM and 11:00 PM, Claimant worked alongside certain regularly assigned employees that had started at 7:00 AM and who were being paid at time and one half rates for their second 8 hours on duty. Claimant contends that he was entitled to receive time and one half pay between 3:00 PM and 11:00 PM as well, by reason of Rule 18 (b) reading:

"(b) Employees who are out of service account reduction in force and called back into service temporarily will be paid the same as regular employees, except in cases where they are not used a full day they will be paid time and one-half for such services, with a minimum of four hours' pay for two hours and forty minutes' work or less."

We don't believe that Rule 18 (b), or similar Rules in effect elsewhere in the industry, have ever been interpreted to suggest that because an employee assigned to a different shift is paid at time and one half rates, under Rules applicable to his situation, that an employee called back into service must also be paid at time and one half rates during this same period. No Awards suggesting this result have been brought to our attention and evidence of a practice of this type is missing.

As we view the Agreement the language of Rule 18 (b), reading that employees temporarily called back into service be paid the same as regular employees, means that if they are assigned as trackmen they shall be paid at the rate of regularly assigned trackmen. If they are assigned to premium rated work they shall be paid at premium rates the same as other regularly assigned premium rated machine operators, foremen, etc. When their hours on duty, their days of assignment or their work on a holiday, require that they be paid at time and one half or double time rates, recalled furloughed employees shall receive overtime rates under the same conditions applicable to regularly assigned employees.

The Rule, in our judgment, does not mean that because the work history of an individual regularly assigned employee has placed him in a time and one half situation that any recalled furloughed employee that happens to be on duty at the same time must also be paid time and one half. Notions that this is required are patently absurd.


It is our opinion that the Claim is without merit and it will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.