

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28801
Docket No. MW-27520
91-3-86-3-839

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

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

(1) The Agreement was violated when the Carrier failed and refused to compensate Sectionman A. Sundem for standby service rendered by him on June 16 and 17, 1985 (System File R211 #1490S/800-34-A-87).

(2) Sectionman A. Sundem shall be compensated continuously from 8:00 A.M., June 16, 1985, until 8:00 A.M. on June 17, 1985."

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 employes 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.

This is a case involving the Employee's right to wages in a standby situation. The Claimant is a sectionman assigned to a crew with headquarters at Noyes, Minnesota, near the Canadian border. On June 14, 1985, the Carrier issued the following written order to the Claimant,

"Arne Sundem will assist Customs from 8 AM Sunday until 8 AM Monday."

The note was signed by the Claimant's foreman and referred to the Carrier's need to have a sectionman assist U. S. Customs Officials inspect freight cars. The Organization asserts that the Claimant was paid only for the time he spent actually opening and closing freight car doors during this twenty-four hour period, and not for the entire time, as he should have been paid.

The Carrier contends that all sectionmen on the Noyes section are required to be on call some weekends to assist the Customs Officials and that the sectionmen have worked out a rotating schedule among themselves to handle this situation. According to the Carrier, the employee who is on call on a given day checks in with the operator to determine when he is required to assist the Customs Officials. Then, according to the Carrier, the Employee only comes into work when needed, and is paid only for those hours.

The Organization stated that it recognized no past practice whereby employees are "obligated to devote themselves to the Carrier's requirements without pay during specified periods outside of regularly assigned hours." The Organization also asserted that in the instant case the Claimant was required to perform service "far beyond being reasonably available for call." According to the Organization, train movements at Noyes requiring customs inspections are not scheduled, and the inspections are performed on very short notice. Therefore, the Claimant was required to initiate and maintain periodic contact with the Control Operator and Customs Personnel to determine for himself when and with what frequency inspections would be required. According to the Organization, the Claimant, once served with his Foreman's written notice, was expected to protect all customs work during the applicable period, to the exclusion of any personal interests. The Organization further asserts that neither the Foreman nor any other supervisory person had any responsibility to call the Claimant as needed, once he received the initial notice to assist Customs.

The Carrier has not refuted these allegations, and they lead the Board to conclude that even if the Carrier was not obligated to pay for hours spent on "standby" in a normal situation, this was not a normal situation, for the following reasons. First, the Claimant did not volunteer for the standby call. He was ordered to be available by the Carrier. The Organization correctly asserts that the Claimant's neglect of this duty to be available was subject to discipline, as evidenced by the Carrier's acknowledgment that Claimant was removed from service for his failure to report for work to assist Customs Officials in a similar situation several weeks before the incident in question.

Second, the Claimant had to be available on very short notice for the customs inspections. The Board concludes from the evidence before it that inspections are somewhat random or at least unscheduled. The sectionman is expected to be on the spot when a Customs Official begins an unscheduled inspection. Furthermore, it is the responsibility of the assigned sectionman to determine when the inspection will occur, because neither the foreman nor any other supervisory official has the responsibility to call in the sectionman for an inspection. Therefore, the sectionman must take the affirmative step of maintaining contact with a train operator and the customs official to determine when an inspection is likely.

These factors would restrict an employee from attending to his personal affairs to a far greater extent than a normal standby situation. Therefore, the Board concludes that this dispute falls under the line of cases cited by the Organization in its submission. For example, in Third Division Award 1070 this Board stated:

"In this case there was no mere request that the employees involved inform the carrier as to whether they may be reached; these employees were officially instructed to hold themselves available for duty during the two-day period covered by the claim. Since they were thus held for duty in line with their regular assignments, they are entitled to compensation as they would have earned if they had actually performed the work in contemplation."

Furthermore, in Third Division Award 1675 this Board stated:

"It was stand-by service. It was of value to the Carrier or otherwise it would not have required Ashford to have been subject to call during this period of time. As someone has said, 'They also serve who only stand and wait.'"

Similarly, in Third Division Award 2640 this Board based its finding that pay for stand-by service was appropriate because during the time period in question the Carrier had the authority to command and direct the activities of the employee. As the record in this case shows, during the one-day period in question the Carrier had the authority to direct and command the activities of the Claimant. If the Claimant were not available he was subject to discipline, as indicated by his discipline for the earlier incident.

The Carrier suggests, however, that this earlier incidence of discipline, over which no claim was filed, indicates that there was a consistent past practice of requiring rotating sectionmen to be available for duty, and paying them only for the hours actually worked. However, there was not sufficient information about the earlier incident presented to the Board to support that position. What is clear from that incident is that the Claimant was assigned another twenty-four hour period during which his failure to appear to help the customs official subjected him to discipline.

Under these circumstances the Board concludes that the Claimant was required to perform a service for the Carrier during the twenty-four hour period in question here, and that service constituted compensable "work" as defined under the Agreement. Therefore, the Claimant is due to be compensated at the applicable rate for twenty-four hour period during which he was on call.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.