

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Kansas City Southern Railway Company
(Former Louisiana & Arkansas Railway 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 allow Foreman R. A. Norwood pay for the overtime work he performed on Friday, September 19, 1986 (Carrier's File 013.31-364).

(2) As a consequence of the aforesaid violation, Mr. R. A. Norwood shall be allowed 2.7 hours of pay at his time and one-half overtime 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 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.

The basic facts are not disputed. Following his regularly assigned tour of duty and after he and his gang members had been released from service for the weekend on Friday, September 19, 1986, the Claimant was contacted by the Roadmaster. The Claimant was instructed by the Roadmaster to instruct two members of his crew to be available for work the next day (their rest day) at 7:00 A.M. The Claimant asserts that he made numerous attempts to contact these two employees by telephone for forty-five minutes, but neither employee could be located. He then, using his personal pickup truck, patrolled the streets of the town for approximately thirty minutes prior to his finding the employees at a "cafe." The claim requests compensation for the time expended in these efforts.

The Organization relies primarily on Rule 25 - Calls, which states:

"Except as otherwise provided in these rules, employees notified or called to perform work not continuous with, before or after, 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 (40) minutes' 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 for actual time worked or held on duty."

It is the Organization's position that the Claimant performed duties associated with and following his regular assignment. Moreover, it contends that no past practice existed on this Carrier's property which prevents payment to the Claimant for his overtime service.

The Carrier takes the position that contacting the employees in question is part of the Claimant's duties and does not qualify for extra pay under Rule 25. It relies on Rule 27-2 which states:

"Employees whose responsibilities or supervisory duties require service in excess of the working hours of the general forces, such as keeping time, making reports, answering correspondence, conferring with superiors, obtaining lineups, etc. will be compensated on a monthly rate. The monthly rates paid these employees are based upon one hundred seventy-six (176) hours per month." (Emphasis added)

It is readily apparent to the Board from a reading of Rule 27-2 that not all duties a Foreman engages in outside his regular hours are compensable above and beyond his monthly rate. Clearly the monthly rate contemplates to some degree that the Foreman will be engaged in certain supervisory activities. The question presented here is whether calling and/or locating employees to direct them to work is one of those duties. It is noted this particular activity is not one of the enumerated duties specifically set forth in Rule 27-2 as being contemplated by the monthly rate. However, the Rule does not limit its coverage only to those duties specifically mentioned. They are listed as examples of general class duties which are contemplated. Thus, the Board views the language of the Rule ambiguous as related to the duties in question here. If the Rule can be said to contemplate these activities, then it is part of the monthly rate, and Rule 25 does not apply. If the opposite is true, it can be said Rule 25 does apply.

One of the tools of interpreting ambiguous language is past practice. It is indicative of what the parties intended the language to mean and how it should apply. In this case the Organization presented no evidence of past practice which supports the idea that calling employees is not part of a supervisor's monthly rated duties. To the contrary, the fact there have been no claims under even remotely similar circumstances suggests a practice to the opposite effect.

In view of the foregoing, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.