

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 Employes
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it required employes assigned to the Carthage Section Gang to suspend work during their regular assigned hours for the purpose of absorbing overtime on June 10, 1986 (System File 100-35-861/11-160-100-9).

(2) As a consequence of the aforesaid violation, Track Foreman W. W. Crim and Trackmen S. B. Walker, A. L. Reed, R. W. Behymer and D. D. Hoover shall each be allowed pay for the difference between their straight time rates and time and one-half rates for a total of eight (8) hours each (i.e., the equivalent of four hours pay each at their respective pro rata 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 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 record in this matter reveals that the fact pattern is essentially the same as it was in Award 147 of Public Law Board No. 2774 between the same parties. The Organization, relying on that Award, maintains that the claim should be sustained. The Carrier contends for a variety of reasons that the Award is erroneous and should not be followed as precedent.

The Board has reviewed the Award in question in light of these facts and has concluded that we would not be warranted in overturning it. While we may not have made the same decision as the Board if the instant case was one of first impression, the rationale of Award 147 is apparent, reasonable and defensible. While it is true that the Claimants there, and here, had an eight-hour period free from duty, which would ordinarily exempt the coverage of Rule 33(b), they only had eight hours off because the Carrier changed the starting time of their assignment from 7:00 A.M. to 8:00 A.M. Rule 33(b) states:

"Rule 33(b) - Time Worked After Sixteen Hours of Continuous Service. Time Worked after sixteen (16) hours of continuous service (except time worked during hours of regular assignment which shall be paid for at time and one-half rate) shall be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty. For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked shall be counted from last placed on duty (exclusive of meal period granted during regular assigned hours) after last being relieved for eight (8) consecutive hours off duty."

"Rule 33(k) - Absorbing Overtime. Employees will not be required or permitted to suspend work after starting any assigned work period, for the purpose of absorbing overtime."

Award 147 found that the Carrier under Rule 35(e) which states:

"Rule 35(e) - Change of Starting Time for Regular Assignments. The fixed starting time for regular assignments will be designated by the supervisory officer, and will not be changed without first giving the employee affected thirty-six (36) hours notice."

prevents the Carrier from changing the starting time without 36 hours notice.

The Carrier argued that the Award was erroneous because it was contrary to the intent and purpose of Rule 35(e). It asserts the Rule contemplates giving employees affected thirty-six hours advance notice when Carrier changes the assigned hours of regular assignments where the employees involved will start and end their time either earlier or later than they did before the change was made.

The problem with this argument is, first, that there is no evidence in the record as to intent and purpose of the Rule. Second, the Rule clearly speaks to changes in the starting time and not to the assigned hours or the aggregate of hours. The Rule can be validly said to be clear and unambiguous. The crew's "fixed" starting time was 7:00 A.M., and it was changed in violation of the Agreement. Thus, while they had eight hours off, it was only because the Carrier impermissibly changed the assignment. Had this violation not occurred, they would have started at 7:00 A.M. and would have earned the amounts claimed. The claim corresponds to their actual damages. It is noted that the Carrier could have avoided this by sending the Claimants home one and one-half hours earlier the previous night.

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 19th day of December 1991.