

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30009
Docket No. MW-29536
94-3-90-3-478

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (Former Seaboard
(Coastline 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 properly compensate Cook M. A. Lang for the overtime service he performed on October 4, 5, 6, 7, 8, 9 and 10, 1989 [System File COOKS-89-56/12(89-1045) SSY].
- (2) The Agreement was further violated when the Carrier failed and refused to properly compensate Cook N. Solomon for the overtime service he performed on October 4, 5, 6, 7, 8, 9 and 10, 1989.
- (3) The Agreement was further violated when the Carrier failed and refused to properly compensate Cook D. L. Jones for the overtime service he performed on September 20, 21, 22, 23, 24, 25 and 26, 1989.
- (4) As a consequence of the violations in Parts (1), (2) and (3), respectively:
 - (a) Claimant M. A. Lang shall be allowed pay for seventeen (17) hours and forty-five (45) minutes at his time and one-half overtime rate.
 - (b) Claimant N. Soloman shall be allowed pay for twenty-two (22) hours and fifteen (15) minutes at his time and one-half overtime rate.
 - (c) Claimant D. L. Jones shall be allowed pay for seventeen (17) hours 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 employe 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 Claimants are Cooks accompanying System Floating Force 5X11, which was assigned to 10-hour workdays, followed by accumulated rest days each half-month. The Cooks are monthly-rated employees. They seek overtime payment for certain hours worked, principally caused by allegedly commencing their cooking duties at 4:00 A.M., prior to the start of the workday for the System Floating Force.

The dispute involves whether hours worked by monthly-rated Cooks are governed by the standard overtime provisions of Rule 27, as well as by Rule 34, Cooks, Section 2, as argued by the Organization, or whether overtime payments are generally limited by Rule 34, Section 2, as argued by the Carrier. Rule 34, Section 2 reads as follows:

"In the event members of the gang are required to work overtime, and the service of the cook is used, he will be paid the overtime rate for extra hours worked or held on duty."

It might be argued that Rule 27 remains in full effect for Cooks and Rule 34 is some sort of guarantee that if overtime is involved for "the gang," the Cooks also are entitled to such overtime. A more careful reading, however, leads to another conclusion. Rule 34 provides overtime for Cooks only if two conditions are met: the gang works overtime and "the service of the cook is used." The Organization's contention that Rule 27 also applies to Cooks thus becomes redundant. What purpose would Rule 34, Section 2 have if, as the Organization contends, Rule 27 would provide overtime payment whenever "the service of the cook is used" in other than regularly assigned hours?

As noted, the Claimants are monthly-rated employees, responsible for completion of their food preparation duties, working at

variance with the usual eight-hour or ten-hour continuous shift. Rule 34, Section 2 thus more reasonably can be read to provide overtime under the stated conditions, rather than under the somewhat broader provisions of Rule 27.

In defense of its position, the Organization relies on Special Board of Adjustment No. 1016, Award 46 (BMW vs. CONRAIL) which supported a similar claim for Cook overtime compensation. However, Award 46 did not involve monthly-rated employees, and a special Rule involving Cooks' overtime differs substantially from Rule 34, Section 2, applicable here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.