

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30480
Docket No. SG-29660
94-3-91-3-14

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Elgin, Joilet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joilet and Eastern (EJE) Railroad:

- (a) Carrier violated the parties Working Agreement, as amended, particularly Discipline Rule 76, when (1) Claimant's rights of due process were violated when Carrier failed to charge Claimant in writing within ten (10) working days of the offense and/or the date it is deemed to have knowledge of the offense; (2) Carrier failed to meet the required burden of proof showing that Claimant "...went on duty at 3:00 a.m., September 28, 1989, without having had sufficient rest, in violation of Hours of Service Law;" and (3) without prejudice to the foregoing positions, discipline rendered of thirty-five (35) demerit marks is excessive for the offense charged.
- (b) As a consequence of such action, Carrier be required to (1) make Steve A Tharp, ID No. 50742 (Claimant) whole for all wages and benefits lost, if any; and (2) clear Claimant's service record of all reference to such charge." Carrier file RS-3-89. BRS Case No. 8113-EJE.

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 employee 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 Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with a charge by the Carrier that he went on duty on September 28, 1989, without having sufficient rest, in violation of the Hours of Service Law. After the Investigation was held as scheduled the Claimant was advised that he had been found guilty as charged and he was assessed 35 demerits.

The Claimant held a regular Signalman position with headquarters at Joliet, Illinois. He was assigned hours of 7:30 AM - 12:00 Noon, and 12:30 PM to 4:00 PM with Saturday and Sunday as rest days. On September 27, 1989, the Claimant answered a trouble call at 4:30 AM at Bridge 198 interlocking plant, which is just outside of Joliet, Illinois, and he worked there for 3 hours until 7:30 AM. Thereafter he returned to headquarters at Joliet and started his regular shift. He worked at Rock Island Tower interlocking at Joliet from the beginning of his shift until 11:30 AM. He did so with his foreman. After lunch he drove his truck to Plainfield, Illinois, and worked there in the afternoon and returned to Joliet and resumed work at the Rock Island Tower at 4:00 PM and continued working there until 5:00 PM. The Hours of Service Reports shows that the foreman recorded the hour from 5:00 PM to 6:00 PM on September 27, 1989, as "dead" time.

The Claimant worked from 4:30 AM until 5:00 PM continuously on September 27, 1989. This amounted to over 12 hours. He then added an additional hour of dead time. These facts are confirmed by the Hours of Service Report and other documents which are part of the record.

On September 28, 1989, the Claimant responded to a trouble call at 3:00 AM at West Chicago, Illinois, and worked at that site until 7:30 AM.

The issue in this case centers on whether the Claimant was in violation of the Hours of Service Law, for which the Carrier levied a discipline, because he allegedly did not take a 10 hour rest before returning to work on September 28, 1989, after working 12 continuous hours on September 27, 1989. If the Claimant actually quit at 5:00 PM on September 27, 1989, then the time between 5:00 PM and 3:00 AM of the following day is 10 hours and there was no violation. This is the view of the Organization. If, on the other hand, the Claimant's September 27, 1989, workday, for the purpose of Hours of Service interpretation, ended at 6:00 PM, then there was a violation because this would have amounted to only a nine hour period of rest before the Claimant again started work the following day.

This Board has no authority to interpret federal law. Its jurisdiction is limited to questions arising out of the interpretation and application of labor Agreements (See Second Division Award 6462; Third Division Awards 19790, 20368). Such must be underlined since the parties raise the issue of the Board's jurisdiction in a case such as the instant one.

An interpretation of federal law need not be made here in order for the Board to fulfill its obligations in this case. The Board need only determine, on the basis of the record, whether the Carrier was justified in assessing discipline against the Claimant in accordance with Rule 76 of the Agreement. What the Board must deal with here is whether the Carrier was justified, as a matter of fact, in concluding that the Claimant merited discipline.

When did the Claimant start his rest period? Evidence of record, provided by the Claimant himself, clearly shows that he started it at 6:00 PM. This is found on the Hours of Service Report which the Claimant filled out for the period of September 16, 1989, through September 30, 1989. The Claimant clearly states, on that Report, that he took from 5:00 to 6:00 PM as dead time on September 27, 1989 and that he started his rest period at 6:00 PM. If that is true, then the Claimant took only 9 hours of rest before reporting for an assignment the next morning at 3:00 AM. This information of fact is confirmed by the Chief Engineer's Hours of Service Report for September 27 and 28, 1989.

According to testimony of the Division Engineer at the Investigation, dead time "...counts neither as active service nor as rest time...." There is no information of record that the Claimant was not familiar with the practice of using dead time. He had, in fact, used it a number of times during the two week period from September 16-30, 1989 according to the record and had filled out his Hours of Service form accordingly. The Claimant further acknowledges, in the record, that he was familiar also with the Hours of Service requirements and had a class on this subject. At no time, during the Investigation, did the Claimant deny that he intended the dead time which he put down for September 27, 1989, to be other than that. He simply says that he used that time to park the company truck, take his own vehicle to a restaurant to eat, and then went home.

On basis of evidence of record the Board can but conclude that the Carrier was justified in levying a discipline against the Claimant. In view of the Claimant's past disciplinary history, as outlined in the record, the Board is not justified, furthermore, in disturbing the number of demerits which the Carrier levied against the Claimant. The claim cannot be sustained.

Award

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois this 13th day of September 1994.