

Form 1 **RECEIVED** NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30621
Docket No. CL-30771
94-3-92-3-606

G. L. HART

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10850) that:

- (1) Carrier violated, and continues to violate the rules of the Agreement when on Saturday, July 28, 1990, on each Saturday thereafter, it required the occupant of Relief Leverman position to perform service in excess of eight (8) hours, but only allowed pro rata pay for the service beyond eight (8) hours, and;
- (2) Carrier shall now be required to compensate Clerk C. C. Tanis and/or his relief for one hour at the time and one-half rate of pay beginning with Saturday, July 28, 1990, and continuing for each Saturday thereafter that Clerk Tanis, or his relief works the Friday/Saturday Assignment."

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.

On July 9, 1990, Carrier posted Bulletin No. 219 establishing a Relief Leverman assignment relieving five different jobs on the following schedule:

<u>"Day</u>	<u>Pos. No.</u>	<u>Hours of Assignment</u>
Wednesday	283	11:00 PM - 7:00 AM
Thursday	271	11:00 PM - 7:00 AM
Friday	334	12:00 MN - 8:00 AM
Saturday	369	11:00 PM - 7:00 AM
Sunday	279	11:00 PM - 7:00 AM"

Claimant, the successful bidder on Bulletin No. 219, worked on Position No. 334 at 12:00 Midnight on Friday, July 27, and completed his assignment at 8:00 AM on Saturday, July 28, 1990. He then started working on Position No. 369 at 11:00 PM on Saturday night. This schedule caused him to work nine hours within the twenty-four hour period commencing Midnight Friday. The Organization contends that working nine hours within a twenty-four period requires that the time in excess of eight hours be paid for at time and one-half rates by the terms of Rule 33 (a) reading:

"(a) Except as provided in Rules 9 and 34, time in excess of eight hours exclusive of meal period, in any day (twenty-four hour period from last starting time) will be considered overtime and paid for on the actual minute basis at the rate of time and one-half. Employees will be allowed time and one-half on the minute basis for service performed in advance of but continuous with regular work period."

Carrier disputes entitlement to time and one-half for the ninth hour worked within a twenty-four hour period on the basis that Rule 26(b)(2) [Article 2, Section 1(e) of the 1949 National 40-Hour Week Agreement] permits it to establish required relief assignments with different starting times on different days: Rule 26(b)(2) provides:

"(b)(2) Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and locations of the employee or employees whom they are relieving."

The issue involved in this matter is not new to this Board. Three years after the 40-Hour Work Week Agreement was adopted in 1952, the Board, in Third Division Award 5996, decided a strikingly similar case involving agreement language identical to that under review here. In that Award the Board concluded:

"Rule 17 1/2(e) must be read in conjunction with 17(a). Rule 17 1/2 (e) is a special provision modifying the general provisions as to overtime work, however the modification as here made does not allow the Carrier to work a man more than eight hours in a 24 hour period.

The same rules was discussed in Award 5414 and as said therein if a man is to be worked more than eight hours in 24 hours, the rule allowing it must be specific in making the exception. In the instant case the rule is not specific and the Carrier cannot work a man more than eight hours in 24 hours without paying time and one-half up to 16 hours work and double time for all over 16 hours as provided by Rule 17 (a). We cannot agree with Carrier's contentions that the rules here involved make an exception in which the Carrier could work a man more than eight hours in 24 hours at the pro rata rate. The part of Rule 17 (a) which states "Except as otherwise provided in these rules," does not make the second paragraph of Rule 17 1/2 (e) an exception as here contended. A Carrier can work a regular relief man at different starting times each day but the rule does not state that he can be worked more than eight hours in a 24-hour period. The Carrier violated Rule 17 (a) when it paid only the pro rata rate."

In a later decision (1969) Third Division Award 17213 noted:

"The first claim is based on the assertion that Carrier erred in not paying Garceau time and one-half for his service on Swing Position 3, since he performed more than 8 hours service within a 24 hours period. This claim is good. The awards of this Board have consistently held, in interpreting rules such as Rule 32(b), that a day, as used therein is a period of twenty-four hours computed from the starting time of a previous assignment. (See Award 14927 and the awards cited therein.)"

Public Law Boards, too, have reached this same result, when reviewing cases involving Rules with text identical to the text of the two provisions under consideration here, Rule 33(a) and Rule 26(f)(2). In Award 17, Public Law Board No. 31, BRAC-EJE, a claim similar to the one under review here was sustained with the comment:

"We think it is by now well-established that a day consists of the 24 hour period commencing with the starting time of the previous assignment, with the result that during the day commencing 9:00 AM Saturday and ending 9:00 AM Sunday claimants were scheduled to work 8 hours to which the pro rata rate is applicable, and one hour to which the time and one-half overtime rate is applicable per Rule 42(a). The above quoted language of Rule 36(e) does not create an exception to Rule 42(a). Awards 5414, 5996, 14927.

From the foregoing, it follows that there is merit in the position on which the claim is based. Claimants have been paid at the pro rata rate for the ninth hour of each day in question, they are entitled to be paid an additional half hour at pro rata rate for each such day."

The Board will follow the conclusion reached in Award 17, Public Law Board No. 31, and allow Claimant one-half hours pay at the pro rata rate for the ninth hour of each day for which a valid claim exists.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.