

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31595
Docket No. MW-30812
96-3-92-3-610**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (Former Seaboard
(System Railroad Company)

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

- (1) The Agreement was violated when the Carrier required Welder T. W. Wilson, Jr., Class III Machine Operator J. D. Ray, Assistant Foreman R. L. Miller, Trackmen C. White, Jr., D. M. Dennis, W. A. Fullwood and Crankhand D. E. Steedley to suspend work during their regular assigned hours for the purpose of absorbing overtime on Thursday, June 21, 1990 [System File 90-99/12(90-1077) SSY].
- (2) As a consequence of the aforesaid violation, the employees named in Part (1) above shall each be compensated for eight (8) hours' pay at their respective time and one-half rates of pay."

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.

Claimants hold seniority within their respective classes on the Tampa Division. At the time of this dispute, Claimants were headquartered at Waycross, Georgia, with an assigned workweek of Monday through Friday, eight hours per day.

On June 20, 1990, a derailment occurred near Waycross, Georgia. Claimants, already observing their assigned workday, continued work until the tracks were returned to service. Claimants were compensated for eight hours at the pro rata rate for service performed from their regular starting time of 7:30 A.M. until 4:30 P.M., eight hours at their respective time and one-half rates from 4:30 P.M. until 12:00 A.M. June 21, 1990, and received pay at their respective double time rates of pay thereafter.

Prior to their regular assigned starting time of 7:30 A.M. on June 21, 1990, Carrier notified Claimants that they were released from service for rest, and instructed them not to work their regular assigned hours on that day. Carrier Supervisors instructed Claimants, and their Foreman, to rest and return to work on June 23, 1990, at the normal time. Carrier compensated the Claimants for three hours at the pro rata rate beginning 7:30 A.M. on June 21, in accordance with Rule 19.

The Organization submitted this claim asserting that Claimants had been released from their regular shift "for the purpose of absorbing overtime, thereby losing their contractual entitlement to premium pay during their regularly assigned duties on Thursday, June 21, 1990." Carrier denied the claim maintaining that Claimants had worked 23 hours, and were "too exhausted" to safely continue work.

The Organization responded to Carrier's denial stating:

"As you are well aware, in emergency situations it is not uncommon for this Carrier to utilize its employees for even longer periods of time than they did in this instant case. Such is evidenced by the attached copy of an article which appeared in the April, 1990 issue of the CSX News. In this instance, many of the Carrier's Maintenance of Way employees worked as long as 48 hours without rest.

It is clearly established through the above that employees are capable of safely performing service as would have been the case here had the

Carrier allowed them to work their regular shift on June 21, 1990, at the time and one-half rate pursuant to agreed to Rules. Mr. Dobbs further asserts that the employees were 'too exhausted,' however, he offers no substantive proof to verify same."

The Organization maintained that as a result of Carrier's actions, Claimants were "denied" their contractual rights, and "damaged monetarily."

Rule 27, Section 6 of the Agreement between the Parties states:

"Employees will not be required to stop work during any assigned work period to absorb overtime made that day or any previous day."

The Organization made out a prima facie case by demonstrating that Claimants were required to stop work at the start of their regular assigned work period in circumstances under which, had they continued to work, they would have earned overtime pay. The burden thus shifted to Carrier to persuasively demonstrate that its action was motivated by a legitimate reason other than that which is curtailed by Rule 27, i.e. avoidance of overtime payments.

In the considered judgement of this Board, Carrier met that burden by showing that the employees had already worked some 23 consecutive hours. The Supervisor on the scene made an ostensibly reasonable managerial decision that Claimants should not be required to work a total of 32 hours without rest, and that decision is supported by plausible and persuasive record evidence. The manifest health and safety implications of working employees such long hours in close proximity to heavy machinery is enough to stay this Board from second-guessing and speculating on a mercenary ulterior motive for Carrier's decision. We find no violation of Rule 27 in the particular facts of this record.

AWARD

Claim denied.

ORDER

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 29th day of August 1996.