

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32318
Docket No. MW-31626
97-3-93-3-638**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier required Denver Division employes to be available for service, i. e., standby service, on December 23, 24, 25, 26, 30, 31, 1991, January 1 and 2, 1992, without properly compensating them in accordance with Rule 29 (System file C-92-0020-13/7MWA 92-5-8).**
- (2) As a consequence of the violation referred to in Part (1) above, the claimants* listed below shall each be allowed pay for all time lost at their respective overtime rates of pay.**

***D. G. Andersen
R. L. Andersen
R. D. Andrews
T. L. Eck
M. L. Palmer
M. D. Shannon
K. A. Sherman
J. D. Wilder
E. L. Simmons**

**D. F. Lambert
J. A. Clements
R. E. Pelton
T. J. Storbeck
M. D. Dirks
K. W. Reeves
J. W. Gale
F. R. Hill"**

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 were given due notice of hearing thereon.

This claim arose when the Claimants who were assigned to work during the Christmas Eve, Christmas Day, New Year's Eve and New Year's Day Holidays, and who were placed on 24-hour standby service, and were allegedly told by their supervisors that they would receive appropriate holiday pay along with an additional eight hours' overtime pay whether they were called and performed service or not. After they were released from standby service, the Claimants were compensated for only eight hours' overtime for each holiday they were required to be on standby service. The Organization took exception and filed the instant claim on behalf of the Claimants.

The Carrier denied the claim contending that the Claimants had volunteered to be placed on a list of employees who wished to be called in for overtime if help was necessary during the holidays. The Carrier points out that in a letter dated December 20, 1991, the Carrier cleared up the Organization's misinformation about the Claimants being on "standby call" and that in fact they had made themselves available for service if the need arose strictly on a voluntary basis.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Claimants were entitled to additional pay for the four holidays on which they were placed on standby service. Although the Organization indicates in its arguments that the Claimants were promised the additional pay, the Carrier has included with its submission two letters which make it clear that such an agreement was not made. Carrier's Exhibit #1 is a December 16, 1991, letter from the Organization's Assistant Chairman to the lodge officers in which he tells the lodge officers that the employees would be entitled to pay for every hour that they were on call. The Assistant Chairman enclosed a summary of Third Division Award 28801

which held that since the employee was on standby for 24 hours he was entitled to continuous compensation throughout the 24-hour period.

The December 16 letter from the Assistant Chairman must have fallen into the hands of the Carrier because four days later, on December 20, 1991, the Division Maintenance Engineer responded stating that the situation differed "drastically" from the Board Award that the Assistant Chairman had sent out to his membership. The Carrier pointed out in the letter that the employees are not being requested to report to the dispatcher's office and that the Carrier only solicited to work on a voluntary basis. The Carrier also took the position that the employees were not told that they were on call. The Division Maintenance Engineer indicated that he wanted the employees to utilize the day off to be with their families and that the Carrier only made the offer of standby service to those who volunteered to be available.

This Board agrees with the Carrier's representative that the employees were not be being required to stand waiting to serve for 24 hours a day as in the case cited by the Organization. Consequently, we find that the Organization has not met its burden of proof and the claim must be denied.

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 13th day of November 1997.