

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33264
Docket No. CL-33852
99-3-97-3-347**

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11744) that:

- 1. The Union Pacific Railroad Company violated the Rules Agreement effective October 16, 1993, as amended, when it withheld clerical employee Wayne E. Lee from doing his assigned duties and responsibilities at North Little Rock, Arkansas, in the Supply Operations - Mechanical department during the period October 20, 1995 through December 8, 1995.**
- 2. Carrier will now be required to compensate clerical employee Wayne E. Lee for approximately forty-six (46) hours' pay. Said compensation at the overtime rate of positions titled Material Handler at North Little Rock, Arkansas.”**

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.

Prior to and including October 20, 1995 Claimant was assigned to the position of Material Handler headquartered at the Carrier's Supply Operations - Mechanical Department in North Little Rock, Arkansas. On that date Claimant was withheld from service for a physical examination as provided in Rule 54 of the applicable schedule Agreement. Claimant was returned to service on December 8, 1995 after passing the physical examination. The Carrier compensated Claimant for eight hours pay at the straight time rate for each work day lost during the period Claimant was out of service. The claim in this case is for overtime compensation.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes who denied the appeal. The dispute remains unresolved, and it is before the Board for final and binding determination.

The claim in this case is governed by Rule 54(b)((2) of the applicable schedule Agreement which provides:

“(b) In the event an employee in active service is required to report for physical examination, the following will govern:

* * *

(2) If the employee passes the examination, he/she shall be returned to work immediately and paid for all time lost taking the examination.”

The question presented by the dispute in this case is whether the requirement that the employee be “. . . paid for all time lost taking the examination” supports the claim.

Citing arbitral authority, the Organization argues that the overtime claimed in this case is necessary to make Claimant whole under Rule 54 for the time he lost as a result of being withheld from service to take the physical examination. Accordingly, urges the Organization, a claim for the overtime is appropriate and should be granted.

Also citing arbitral authority, the Carrier denies that it has violated Rule 54 or any other provision of the applicable schedule Agreement such as would entitle Claimant to the overtime sought by the claim in this case. Moreover, urges the Carrier, the claim for overtime is based upon speculation which renders it clearly inappropriate. Additionally, the Carrier maintains, the claim is overly broad in that it apparently seeks all the overtime worked in Claimant's department during the claim period rather than a proportional amount of that overtime attributable to Claimant's position.

The Division has thoroughly reviewed the record in this case, including the arbitral authorities cited and provided to it by the parties. Such review leads the Division to conclude that the claim has some merit.

Of the arbitral authorities relied upon by the parties Interpretation No. 1 to Third Division Award 19934 and Interpretation No. 1 to Third Division Award 21122 speak most directly to the issue in this case. When read together the Interpretations hold that backpay to which an employee withheld from service is entitled includes overtime which he or she would have worked had they not been withheld from service. Accordingly, the claim in this case has merit to the extent that it seeks such compensation.

The foregoing Interpretations also make clear that the appropriate way of measuring overtime compensation due under circumstances such as involved in this case is the overtime compensation received by the employee's replacement. We believe that such measure applied to the claim in this case would eliminate any improper speculation as alleged by the Carrier.

However, the foregoing Interpretations further lead us to conclude that the Carrier is correct in its contention that the claim as worded is overly broad. Any overtime due Claimant in this case must be determined with respect to his specific assignment as a Material Handler and measured by the overtime earnings of his replacement. Any amount of overtime greater than that would appear to contravene foregoing Third Division precedent.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 4

Award No. 33264
Docket No. CL-33852
97-3-347

ORDER

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 6th day of May 1999.