

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34014
Docket No. MW-31529
00-3-93-3-530**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to properly compensate Nicholas P. Digesualdo, Mike Lucero and Tony D. Padilla for services rendered on June 1, 1992 (System File D-92-22/MW-23-92).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants Nicholas P. Digesualdo, Mike Lucero and Tony D. Padilla shall each be allowed the difference between the straight time rate they were paid and the time and one-half rate they should have received for the hours of service rendered on June 1, 1992.”**

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 case involves a claim by the Organization that the Carrier violated Rule 22(d) by its failure to pay the Claimants at the time and one-half rate for all hours worked on their regular 7:30 A.M. to 4:00 P.M. shift on June 1, 1992.

The facts in this claim are undisputed. The Claimants are regularly assigned to service Monday through Friday, 7:30 A.M. to 4:00 P.M. On Sunday, May 31, 1992, the Claimants were called to perform service commencing at 11:00 P.M. They were relieved from service at 3:00 A.M. on June 1, 1992. At 7:30 A.M. on June 1, 1992, each Claimant commenced his regular tour of duty, and commencing at 4:00 P.M. each was relieved for eight consecutive hours time off duty. For their regular shift on June 1, 1992, the Claimants were each compensated at the straight time rate of pay.

According to the Organization, Rule 22(d) mandates that each Claimant should have been compensated at time and one-half his straight time rate of pay for his regular tour on June 1, 1992. Rule 22(d) states, in pertinent part, as follows:

“Calls

- (d) Employees notified or called to perform service in advance of or following and not continuous with regular work assignment . . . will be paid a minimum of two (2) hours forty (40) minutes at time and one-half rate for two (2) hours forty (40) minutes of service or less. If the service for which called extends beyond the minimum of two (2) hours forty (40) minutes, employees will be paid at the overtime rates as specified in subsection (a) of this rule until relieved for eight (8) consecutive hours time off duty.”

The Organization maintains that the above language is so clear and unambiguous that there can be no question but that the Claimants were entitled to be paid at the time and one-half rate for all hours worked on June 1, 1992 until such time as they were relieved from duty for eight consecutive hours. We quote from the Organization's Submission:

“Rule 22(d) clearly and unambiguously stipulates that where, as here, a call which is not continuous with an employee's regular assignment extends beyond two (2) hours and forty (40) minutes, the employee will be paid at the applicable overtime rates (time and one-half or double time) until

relieved for eight (8) consecutive hours. In this instance, the Claimants responded to a call and performed four (4) hours service not continuous with their regular assignment, were relieved for only four (4) hours and thirty (30) minutes and then performed an additional eight (8) hours of service. As a consequence of their not being relieved for eight (8) consecutive hours, the Claimants were entitled to be paid at the time and one-half rate for the eight (8) hours of service performed between 7:30 A.M. and 4:00 P.M. on June 1, 1992."

The Carrier, on the other hand, asserts that Rule 22(d) was not violated. According to the Carrier, Rule 22(d) requires that the Claimants shall have been paid overtime rates as specified in Rule 22(a). Rule 22(a) states:

"Computing

- (a) Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period to be paid at straight time rate.

Time worked after sixteen (16) hours of continuous service shall be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty. For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked shall be counted from time on duty until relieved for eight (8) consecutive hours time off duty.

It is understood that nothing in this rule requires that the Company retain an employee on duty at punitive rate of pay."

The Carrier insists that it complied with these requirements when it paid the Claimants time and one-half for time worked preceding their assignment and straight time for working their regular shift. Under Rule 22(a), the Carrier argues, regularly assigned work is always paid at the regular rate of pay.

In response, the Organization points out that Rule 22(a), by its terms, applies only to instances where overtime service is performed continuous with an employee's regularly assigned hours.

After reviewing the record evidence, we have determined that the Organization's claim should be sustained. We agree with the Organization that Rule 22(d) applies because the Claimants' regular tour on June 1, 1992 was not continuous with the service performed between 11:00 P.M. and 3:00 A.M. the previous night. Rule 22(a) would have applied had the Claimants remained on duty until the start of their regular tours.

We believe that the Carrier misreads the requirement in Rule 22(d) that employees covered by the provision "will be paid at the overtime rates as specified in subsection (a) of this rule." Contrary to the Carrier's assertion, the quoted language does not mean that Rule 22(a) applies in toto when a call-in exceeds two hours and 40 minutes. Rather, only that part of Rule 22(a) pertaining to overtime rates applies. Thus, employees who are called in to perform service of more than two hours and 40 minutes in advance of or following their regular assignment, but not continuous with it, shall be paid at overtime rates for all subsequent service performed until they are off duty for a period of at least eight consecutive hours. Under Rule 22(a) the applicable overtime rate shall be time and one-half unless and until the employees work 16 hours of continuous service, in which case the compensation shall be at a double time rate.

Here, the Claimants were called in at 11:00 P.M. on May 31, 1992 to perform four hours of service in advance of their regular tour. When their regular tour commenced at 7:00 A.M. on June 1, 1992, they had not been off duty at least eight consecutive hours. Under Rule 22(d), therefore, they were each entitled to compensation at the overtime rate of time and one-half for the eight hours of service they performed from 7:30 A.M. until 4:00 P.M. on June 1, 1992.

Accordingly, the Organization's claim is sustained and each Claimant shall be paid the difference between the straight time rate he was paid for service rendered on his regular 7:30 A.M. to 4:00 P.M. shift on June 1, 1992, and the time and one-half rate he should have received for that service.

AWARD

Claim sustained.

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 19th day of April, 2000.