

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37665
Docket No. MW-36614
05-3-01-3-140

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate system gang employee T. W. Knapp for the period beginning November 1 through December 15, 1999 (System File UPSG-2748T/1224117).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. W. Knapp shall now receive compensation payment in the amount of ninety-four dollars (\$94.00).”

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.

The facts of this matter are not in dispute. We note that this is a companion case to Third Division Award 37667. On the dates pertinent hereto, the Claimant was regularly assigned to a position on a system gang and had previously met the requirements for the \$1.00 allowance provided by Section 7 of the August 1, 1998 Consolidated System Gang Agreement.

The issue in this case involves the interpretation of Section 7 of the August 1, 1998 Consolidated System Gang Agreement, which reads, in relevant part, as follows:

"Section 7.

(A) Employees filling any Group 20, 26 or 27 position(s) for a period of six (6) months or more as specified hereinafter, will receive one dollar (\$1.00) for each hour they received straight time compensation during the entire six-month period and beyond as applicable. This one dollar (\$1.00) allowance is not subject to future general wage increases or cost of living allowances unless agreed to otherwise. . . ."

The Organization contends that the Claimant is entitled to \$1.00 per hour for each hour for which he was compensated, including holidays, vacation days and personal days. It contends that the plain language specifically provides that the \$1.00 shall be paid not just for time worked, but for all hours compensated. Conversely, the Carrier contends that the burden is on the Organization to prove that the intent of the parties was that all hours were to be considered, and not just those worked. The Carrier contends that the matter has already been resolved by Public Law Board No. 6430, Awards 2 and 4.

Specifically, the determination in those Awards is as follows:

"The present dispute involves a disagreement between the parties about the meaning of the term 'straight time compensation' in Section 7 of the Consolidated System Gang Agreement. In particular, the Organization asserts that the clause 'straight time compensation' requires the Carrier to pay eligible employees one

dollar per hour for holidays, personal leave, and vacation that derive from the actual hours that such employees work in any Group 20, 26 or 27 position(s) for a period of six (6) months. In contrast, the Carrier maintains that the clause 'straight time compensation' does not require such payments because 'straight time compensation' only covers hours that such employees actually work. The Carrier adds that the parties knew how to provide greater precision when they intended to extend certain benefits as reflected in Rule 39(e), which relates to per diem allowances. The Carrier therefore reasons that the absence of such explicit language in Section 7 precludes a finding that Section 7 extends to holidays, personal leave, and vacations.

A careful review of the record indicates that the clause 'straight time compensation' is silent in this regard. As a result, the clause 'straight time compensation' also is arguably ambiguous because it is susceptible to either the interpretation offered by the Organization or the interpretation offered by the Carrier. No other evidence set forth in the present record provides suitable guidance to resolve this uncertainty. In the absence of greater clarity in the record, this Board lacks the authority to create, devise, or formulate a proper meaning or interpretation for the clause 'straight time compensation' in Section 7. Such a determination is a matter for collective bargaining, not arbitration. As a result, the Organization necessarily failed to meet its burden of proof in the present case. . . ."

After a review of the evidence and the positions of the parties, the Board finds that the Organization has not been able to meet its burden of proof. We agree with the Carrier that the same matter has been addressed by Public Law Board No. 6430. While we agree that there are minor differences between the cited cases and the instant case, they are not sufficiently distinguishable to modify the result. The claim is, therefore, denied.

**Form 1
Page 4**

**Award No. 37665
Docket No. MW-36614
05-3-01-3-140**

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 21st day of December 2005.