

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39686
Docket No. MW-37829
09-3-NRAB-00003-030201
(03-3-201)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to compensate Mssrs. R. L. Deter, III and G. K. Sheetz for their service in connection with reporting from Cumberland, Maryland to Buffalo, New York to assist in snow removal on December 27 through 31, 2001 and returning to Cumberland, Maryland [System File A05235902/12(02-0233 CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. L. Deter, III and G. K. Sheetz shall now be compensated ‘. . . for sixty-seven hours and one-half (67:30) overtime and four and one-half (4 ½) double time hours, sixteen (16) hours holiday pay, plus mileage from Cumberland, MD to Buffalo, NY and return. . . .’”

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.

Claimants R. L. Deter, III and G. K. Sheetz were on furlough on December 27, 2001 when they were asked if they would volunteer to go to Buffalo, New York, to assist with snow removal. They left Cumberland, Maryland, at 3:00 P.M. that day and arrived in Buffalo at 3:30 A.M. the next morning. They worked, with appropriate rest intervals, through December 31, when they drove back to Cumberland. The two Claimants acknowledged that neither the Roadmaster who called them or the Front Office personnel said anything about how they would be compensated. Later they were told only that they would be paid at the A-Operator rate.

As a result of this stint of work, they put in the following claim: 46 hours at straight time, which includes rest periods; 61.5 hours of time and one-half, which includes travel time; 5.5 hours of double time, eight hours of double time and one-half; and allowance for seven meals. In later correspondence, they noted that they had been paid for 24 hours at straight time, 20 hours at time and one-half, and one hour at double time plus \$138.00 in expense reimbursement. In denying their claim, Chief Regional Engineer D. J. Evers stated that they were entitled to reimbursement for the roundtrip from Cumberland to Buffalo, but were not entitled to holiday pay because neither had worked 11 days in the preceding 30, nor the day before and the day after the holidays.

Rule 16(b) states: "The time of employees so notified to report at a designated time to perform service outside of and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at headquarters. The time of employees so called to perform such service immediately shall begin at the time called and end when they are released at their headquarters."

The parties made many assertions in this case without providing evidence to assist the Board in determining where the proper analysis lies. Based on the evidence before us, we conclude that the Claimants are entitled to reimbursement for the actual mileage for the roundtrip between Cumberland, Maryland, and Buffalo, New York, (980 miles at 34¢ per mile). The record indicates that some but not all of this amount has already been paid.

We also conclude that Rule 16 (b) does not apply in this instance. The plain language of that provision indicates that it applies to active employees who are assigned work outside of their regular hours. The Claimants here were on furlough at the time of this work and, therefore, had no regular hours. Nothing in the record indicates their status in the previous November when apparently they were paid travel time when they reported for snow removal at some distant location.

Although the Carrier did not provide the Claimants' employment records during handling on the property, the Claimants acknowledged that they did not work the 11 days needed in the prior 30 days in order to qualify for holiday pay; they were seeking to be credited with safety days in order to bring themselves to the required 11 compensated days. Nothing in the record reveals under what circumstances employees, active or on furlough, may claim safety days. Absent such evidence, we can find no basis for ascertaining that the Carrier's denial of such a request constituted an Agreement violation. Without the added safety days, there is no question that the Claimants did not have enough work days to qualify for holiday pay.

AWARD

Claim sustained in accordance with the Findings.

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 26th day of May 2009.