

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39687
Docket No. MW-37830
09-3-NRAB-00003-030202
(03-3-202)

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 properly compensate Mssrs. M. Emerick and J. Porter for their service in connection with reporting from Meyersdale, Pennsylvania to Buffalo, New York to assist in snow removal on December 27, 2001 through January 1, 2002 and returning to Meyersdale, Pennsylvania [System File A05235802/12(02-0234) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Emerick and J. Porter shall now be compensated ‘. . . for sixty-nine hours and forty-nine (sic) minutes (69:45) overtime and four (4) double time hours, sixteen (16) hours holiday pay, plus mileage from Meyersdale, PA 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.

On December 27, 2001, Claimants M. Emerick and J. F. Porter were asked if they would volunteer to go to Buffalo, New York, to assist with snow removal. They left Meyersdale, Pennsylvania, at approximately 8:00 P.M. that night and arrived in Buffalo at 3:00 A.M. the next morning. They worked until 8:30 A.M. at which time they were relieved. They began work again at 3:00 P.M. on December 28 and worked until 8:30 A.M. on the December 29, then again from 3:00 P.M. on December 29 until 9:00 A.M. on December 30 and from 3:00 P.M. on December 30 until 7:30 A.M. on December 31. They left Buffalo at approximately 11:00 P.M. on December 31 and arrived home at 5:15 A.M. on January 1. The two Claimants acknowledged that they were not told how they would be compensated, but assumed it would be in the same manner as in the previous November for snow storm duty in Buffalo, when they had received around-the-clock pay from when they left home until they returned, plus mileage.

The Organization cites Rule 16(b) to support its position that the Claimants should be paid for all time away from home. That Rule 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 Carrier denied the claim, pointing out that the Claimants were never told they would be paid around-the-clock and were not entitled to holiday pay because they had not worked 11 days in the prior 30, nor the day before and the day after the holidays (December 31 and January 1). The Carrier did acknowledge during handling on the property that the Claimants were entitled to roundtrip mileage between Meyersdale and Buffalo.

Based on the evidence before us, we conclude that the Claimants are entitled to reimbursement for the actual mileage for the roundtrip between Meyersdale,

Pennsylvania, and Buffalo, New York. We further conclude that neither Claimant is entitled to holiday pay because there is no evidence that either one worked on the day following the holiday, a required element of eligibility for holiday pay.

Finally 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. Although the record is not definitive about whether the Claimants were on furlough on December 27, it clearly demonstrates that they were not assigned or called to this work, but were asked if they wished to volunteer, which they did. Nothing in the record indicates their status in the previous November when apparently they were paid travel time for working on snow removal in Buffalo.

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.