

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40847
Docket No. SG-40873
11-3-NRAB-00003-090185**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. L. Pratt, for eight hours pay at the overtime rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 600, when it failed to compensate Claimant for eight hours overtime on May 4, 2007, when he was required to work the afternoon shift (3 PM to 11 PM) instead of his regularly assigned bulletined position (7 AM to 3 PM). Carrier compounded this violation when it failed to deny the Organization’s appeal within 60 days per the provisions of Rule 700. Carrier’s File No. 1484520. General Chairman’s File No. S-600 (d)-903. BRS File Case No. 14158-A&S.”

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 Claimant was a Retarder Yard Technician (RYT) whose normal shift was from 7:00 A.M. to 3:00 P.M. This claim involves a dispute concerning the wage rate paid to the Claimant for his work on the afternoon shift on May 4, 2007, and relies upon both Rules 600(d) (monthly rate paid for first five days of work week for position assigned) and 700 (Claims-Grievances and Discipline). The following provision of Agreement is also relevant to this dispute:

“Rule 312.

Employees changed from one shift to another will be paid the overtime rate for the first shift of each shift change. This will not apply when shifts are changed at the employees’ request or in the exercise of seniority.”

On the property, the Organization stated that the Claimant worked the afternoon shift on the claim date at the request of Mark Doner, who was a Carrier official in charge of Car Damage Prevention, and with the approval of his Manager, in order to shoot radar on cars in the yard for Doner, and solely for the benefit of the Carrier. The Carrier countered that the Claimant changed shifts at his own request and not at the direction of management. The Organization reaffirmed that it was undisputed that Doner asked the Claimant to work the second shift to shoot radar for him, and there was no other reason why the Claimant would have worked the later shift when he could have done the job during his regular hours. The Organization also asserted that it did not receive the Carrier’s December 13, 2007, denial until March 20, 2008, after it had already appealed and requested payment of the claim for untimely denial under Rule 700.

The Organization initially states that because it did not receive a timely disallowance of the claim from the Carrier, it is entitled to have it paid as presented under Rule 700, citing Third Division Awards 34080 and 27480. It argues that the Claimant performed work, outside his regular hours, at the request of a management official who wanted radar shot during the afternoon shift, and solely for the benefit of the Carrier, and is entitled to overtime pay under Rule 600(d).

The Carrier contends that it has proven, on the record, that it timely responded to the claim, and that there has been no violation of Rule 700. With respect to the merits, the Carrier asserts that the Claimant was granted permission to work the second shift on May 4, 2007, at his own request, and is not entitled to overtime compensation for changing shifts that day, under Rule 312. It asserts that a

fundamental dispute of fact exists, requiring that the claim be dismissed for the failure of the Organization to meet its burden of proof, citing Third Division Awards 26478, 37204, 33895 and 36977.

We find no procedural violation in this case. A careful review of the record convinces the Board that this case does not present a situation where there is an irreconcilable dispute of material fact requiring the dismissal of the claim, as existed in Third Division Awards 26478 and 37204. There are no written statements from any Carrier official contradicting the assertion that the Claimant's change of shift was at the request and direction of Doner, who wanted him to shoot radar at the cars in the yard during second shift, and that he, in fact, did so. Further, there is no evidence that the approval of his shift change by his Manager was for the Claimant's benefit or why he may have wanted to perform this job function outside his regular work hours. Because the Carrier never successfully refuted the critical fact that the Claimant was asked to work the second shift by a Carrier Official, we find that the Organization sustained its burden of proving that the Claimant was entitled to be paid at the overtime rate for his work on the second shift on May 4, 2007. Because it appears that the Claimant already received his regular rate of pay for that date, we direct the Carrier to compensate him for the additional one-half time pay for his eight hours of work on May 4, 2007.

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 11th day of January 2011.