

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No.41683
Docket No. SG-41717
13-3-NRAB-00003-130081

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of B. K. Eccardt, J. B. Hirtz, D. D. Drum, J. C. Edington, R. A. Ball, and L. R. Wilterding, for six hours each at the time and one half rate of pay and seven hours each at the double time rate of pay, account Carrier violated Agreement Rules 10, 11, and 45 when it held the Claimants on duty at the hotel for snow storm coverage and failed to compensate them on January 28 and 29, 2010. Carrier's File No. 35-10-0009. General Chairman's File No. 10-015-BNSF-129-S. BRS File Case No. 14510-BNSF.”

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 is a Rule interpretation case where the facts are not in dispute. On January 28, 2010, a Signal gang was working away from home when an ice storm was forecast to

hit eastern Missouri. The employees were working the last day of their normal cycle. They had been staying in a motel in Cape Girardeau, Missouri. The crew was instructed to leave work early and go to the motel in order to be fully rested and able to work a full shift when the ice storm hit. Instead, the ice storm stayed north and east of their location. As a result, the employees were never called to go to work. The following morning, after checking out of the motel, the crew traveled back to their headquarters location. While they were paid for the day on January 28, they were not paid anything for that night or for the next day.

The Organization claimed six hours at the time and one-half rate plus seven hours of double time for a violation of Rules 10, 11 and 45 for each of the employees in question. The Carrier says they were paid for their full shift, even though they were released early, they were never called out to work, there is no standby pay provision (for these employees) and therefore the employees are entitled to nothing.

The Rules in question state, in pertinent part:

"RULE 10 – OVERTIME – HOURLY RATED EMPLOYEES

- A. Time worked preceding and continuous with a regularly assigned work period will be paid for on the actual minute basis at time and one-half rate, with a minimum of one hour at time and one-half rate and payment of double time rate after sixteen (16) hours of work in any twenty-four (24) hour period. An employee required to work eight (8) or more hours preceding and continuous with his regularly assigned work period will be paid at time and one-half rate for work performed during the regularly assigned work period.**
- B. Time worked following and continuous with a regularly assigned work period will be paid for on the actual minute basis at time and one-half rate, with payment at double time rate after sixteen (16) hours of work in any twenty-four (24) hour period.**
- C. There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rate on holidays or for changing shifts, be utilized in computing the five (5) days per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, travel time, etc., be utilized for this purpose, except when such**

payments apply during assigned working hours in lieu of pay for such hours, or when such time is now included under existing rules in computations leading to overtime.

NOTE: In the application of this rule paragraphs A and B, an employee will not be released from duty for the purpose of breaking the continuity of overtime work.

RULE 11 – CALLS

- A.** An employee notified or called to perform work outside of and not continuous with his regular work period will be paid a minimum of two (2) hours and forty (40) minutes at time and one-half rate and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis, with payment at double time rate for work in excess of sixteen (16) hours of continuous work.
- B.** The time of an employee who is notified prior to release from duty will begin at the time required to report at designated point at headquarters and end when released at such point. The time of an employee who is called after release from duty will begin at the time called and end at the time he returns to designated point at headquarters.

RULE 45 – RATES OF PAY

* * *

- K.** If, after assigned working hours, a maintenance employee is used off his assigned territory, he will be compensated under the call rule.”

The parties agree that Rules 10 and 11 apply to all employees.

The Organization says that the employees were instructed to go back to the motel. They were not free to go home. Nor were they free to go elsewhere, as they might please. The Carrier says, in response, the employees were free to do what they wanted.

After reviewing all of the evidence, the Board finds that the Carrier's argument is somewhat disingenuous. It is clear that the Carrier wanted, and in fact ordered, the employees to go to the motel. They were to be rested so they could work a full shift when the ice storm hit. To say otherwise would mean that the employees could have gone home with impunity. Clearly, they could not. The Carrier cannot have it both ways – ordering (or at the very least wanting) the employees to stay to fight the effects of the storm; then when the storm does not materialize, simply say, because you did not have to go to work, you get nothing.

With respect to everyone but the Foreman, the Organization has shown that the crew should each get six hours of straight time and seven hours of double time. With respect to the Foreman, the Organization failed to meet its burden of proving that he was off of his assigned territory, and therefore the Foreman is not entitled to pay.

It must be said that this Award is limited to the specific circumstances of this case. When a crew goes back to an away-from-home hotel in the middle of their weekly schedule to get rest to come out the next day, there should normally be no expectation of pay of the nature granted in this Award.

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 18th day of June 2013.

Labor Member's Dissent to Third Division Award No. 41683

Neutral Member: Roger K. MacDougall

At first glance, one may be surprised that the Labor Member is Concurring and Dissenting to an Award that was sustained. While the logic used to reach the decision is sound, the Neutral Member was confused by the Carrier's artful presentation in its attempt to show that the Organization did not meet its burden of proof.

In this case, the Carrier wanted and, in fact, ordered the Claimants to report to their lodging facility in the middle of their regular shift so that they could be rested to work a full shift when an incoming ice storm arrived. They were told to be ready to be called to service. The storm never materialized and the employees left the lodging facility to return home the next day. It was then that the Carrier decided not to compensate the employees for the time that they were held on standby. The Carrier argued that the employees could come and go as they pleased during that time being held, but it was clear to the majority that they could not. With this we concur.

Moving to the Dissent. The Neutral Member stated in the Award that:

"With respect to everyone but the Foreman, the Organization has shown that the crew should each get six hours of straight time and seven hours of double time. With respect to the Foreman, the Organization failed to meet its burden of proving that he was off of his assigned territory, and therefore the Foreman is not entitled to pay."

The Organization did not need to prove that the Foreman was off of his assigned territory. The Foreman is not a maintenance employee as contemplated by the Neutral. The Neutral cited a portion of Rule 45-K in support of his decision. It states:

"If, after assigned working hours, a maintenance employee is used off his assigned territory, he will be compensated under the call rule."

The Foreman is a "**construction**" employee, just as the other employees, and should have been compensated at his respective rate, just as the other members of this same gang.

We respectfully concur with and applaud the majority in its logical conclusions. At the same time we dissent with the opinion that the Foreman was covered under maintenance employee rules. He was a member of the same "Construction gang" and should have been compensated for the same amount of time as the rest of his gang.

Respectfully submitted,



John Bragg
NRAB Labor Member
Vice President
Brotherhood of Railroad Signalmen