

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41854  
Docket No. SG-42069  
14-3-NRAB-00003-120446**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(  
(Northeast Illinois Regional Commuter Railroad  
( Corporation (Metra)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (METRA):**

**Claim on behalf of R. J. Mezo, for compensation in the amount of \$277.80, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15 when it directed the Claimant to begin working at 6:00 p.m. on February 1, 2011, and required him to work 44 continuous hours until it released him from duty at 2:00 p.m. on February 3, 2011, and then refused to properly compensate him at the appropriate straight-time, overtime, and double-time rates of pay for the portions of those hours to which these rates were applicable. Carrier’s File No. 11-21-800. General Chairman’s File No. 13-S-11. BRS File Case No. 14767-NIRC.”**

**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 July 11, 2011, the Organization filed this claim asserting that the Carrier violated Rule 15 of the Agreement when it failed to properly compensate the Claimant for 44 continuous hours of work that he performed between February 1 and February 3, 2011 in connection with a severe snowstorm. The crux of the dispute is premised on the Organization's contention that the double time rate of pay stays in effect when employees are required to work continuously, after the first 16 hours from the actual start time of the assignment, from one 24-hour period into the next 24-hour period.

When this dispute arose, the Claimant was assigned to a Signalman Truck Driver position on the Metra Electric District. His regular assignment was from 6:00 A.M. to 2:00 P.M. Monday through Friday. On February 1, 2011, the Carrier rested the Claimant, with pay, for his regular assignment so that he could be available to begin work at 6:00 P.M. the same day. The Claimant worked continuously until 2:00 P.M. on February 3, 2011.

In a letter dated August 26, 2011 the Carrier denied the claim asserting that it did not violate Rule 15 and that the Claimant was paid properly. It also stated that the Organization was mistaken in claiming that the Claimant had only one starting time during the period in dispute.

The Organization argues that Rule 15 requires the Carrier to pay the Claimant double time for all hours after 10:00 A.M. on February 2, 2011, which is the 16 hours of work performed after starting the overtime assignment at 6:00 P.M. on February 1. According to the Organization, there is only one starting time that should be used when calculating overtime pay in accordance with Rule 15 when the hours worked are continuous and extend past the initial 16 hours. The

Organization rejects the Carrier's assertion that the 24-hour period is "reset" when applying Rule 15. The Organization points to the fact that the Claimant was not released until 44 hours after starting the assignment and, therefore, there was no other starting time other than 6:00 P.M. on February 1, 2011.

The Organization relies on Third Division Award 20093 where it contends the facts and contract language - Rule 14 - are similar to the matter now before the Board. There it was determined that an employee can only have one starting time during a period of continuous work that exceeds 16 hours. As such, argues the Organization, Award 20093 found that double time applied to all hours worked after the 16th hour because the work was uninterrupted and not effected by the fact that the employee worked from one 24-hour period to another.

The Organization further cites Second Division Award 6581 and Third Division Award 10888 in support of its contention that the Board here must follow the unambiguous language of Rule 15. The Organization maintains that the Board cannot add to or create an exception by looking beyond the clear language of the contract provision.

Further, the Organization argues vehemently that in the severe winter storm of 1999 the Carrier compensated employees double time for all time worked over 16 hours until the employees were released from duty. It also contends that the same double time calculation was used on large track cutover projects when employees were worked more than 16 hours.

The Carrier contends that the Claimant was paid in accordance with the clear and unambiguous language of Rule 15 and that the Organization has not met its burden of proof that a Rule violation occurred. The Carrier argues that double time is paid when an employee works more than 16 hours ". . . in any 24-hour period, computed from the starting time of the employee's regular shift . . . ." The Carrier contends that nothing in Rule 15 requires it to pay double time after 16 hours for continuous overtime service that extends past the 24-hour period.

The Carrier argues that in accordance with Rule 15 the starting time for overtime purposes is the Claimant's regular shift time of 6:00 A.M. It is undisputed that the Claimant was rested with pay beginning at 6:00 A.M. on February 1, 2011.

Therefore, the Carrier calculates the compensation due the Claimant for the period of February 1 through February 3, 2011 as follows:

- February 1 - 6:00 A.M. to 2:00 P.M. = 8 hours straight time (rested)  
6:00 P.M. to 6:00 A.M. (February 2) = 12 hours overtime\*
  - February 2 – 6:00 A.M. to 2:00 P.M. = 8 hours straight time  
2:00 P.M. to 10:00 P.M. = 8 hours overtime\*  
10:00 P.M. to 6:00 A.M. (February 3) = 8 hours double time\*\*
  - February 3 - 6:00 A.M. to 2:00 P.M. = 8 hours straight time
- \* Overtime is paid at “one and one-half times the basic straight time rate”
- \*\* According to the Carrier, 10:00 P.M. of February 2 is first time in a 24-hour period, beginning with the Claimant’s regular starting time, that he worked more than 16 hours.

The Carrier avers that the Claimant does not have only one start time when working continuous overtime as claimed by the Organization. It contends that Rule 10 prohibits a change to an employee’s bulletined starting time and, therefore, the Claimant’s starting time for purposes of calculating overtime in accordance with Rule 15 is 6:00 A.M. The Carrier cites Third Division Award 5262 which it contends supports the conclusion that an employee’s regular starting time is used to calculate when double time is paid in any 24-hour period. It also asserts that the Rule applied in Award 20093 is substantially different than Rule 15 in the instant case and, therefore, the Board should disregard the findings in that Award.

Further, the Carrier argues that how the Carrier managed its overtime in other districts during the snowstorm is neither relevant nor binding on the dispute here. It contends that the application of Rule 15, as claimed, is the governing provision. The Carrier also avers that the past practice argument made by the Organization was not made during the on-property handling of this matter and, therefore, it cannot be considered by the Board.

The relevant contract language applicable to the dispute is as follows:

Rule 15, in pertinent part, reads:

**“SECTION 1 (a) OVERTIME – BEFORE AND AFTER BASIC DAY:**

The hourly rates named herein are for an assigned eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows:

Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at one and one-half times the basic straight time rate.

Time worked in excess of sixteen (16) hours of work in any twenty-four (24) hour period, computed from the starting time of the employee’s regular shift, shall be paid for at double their basic straight time rate.”

The Board finds that the Organization has not met its burden of proof with substantial evidence that the Carrier violated Rule 15 as claimed. The record contains sufficient proof that the Claimant was paid double time in accordance with Rule 15 for work performed in excess of 16 hours within the applicable 24-hour period. The record does not contain substantial evidence that Rule 15 should be interpreted to provide double time pay for all hours worked after the Claimant provided service beyond the 16 hours beginning with the actual starting time of the assignment.

Rule 15 is clear and unambiguous where it provides that overtime calculations for double time must be based on “. . . the starting time of the employee’s regular shift.” No other meaning can be derived from the Rule. It specifically states that double time is payable after the requisite 16 hours of work is performed. Those 16 hours are defined as those which are worked in a “twenty-four (24) hour period” which for the purpose of calculating how much double time is to be paid, must be “computed from the starting time of the employee’s regular

shift,” which was 6:00 A.M. on each day referenced in the claim. As such, the Board finds that the Carrier properly compensated the Claimant.

The valiant argument made by the Organization that Rule 15 should be interpreted to provide for double time as claimed would require the Board to add, or expand upon, the specific language of the contract provision. There is ample precedent to apply the long-standing principle in contract interpretation that where the terms of an agreement are clear and unambiguous, the Board cannot create its own interpretation by adding to, detracting from, or inserting an exception.

Even if an ambiguity did exist, the record does not contain sufficient proof of an established past practice that continuous hours of work beyond the initial 16 hours - irrespective of the 24-hour period defined in Rule 15 - must be payable at the double time rate. Assertions alone, without evidence of a binding past practice, cannot prevail.

The Board also finds that Award 20093 is distinguishable from the facts before us. Rule 14 cited in that Award is substantially different from Rule 15 applicable to the instant dispute. In Award 20093 it was determined that based on Rule 14, and where there was no interruption in the continuity of the work, double time should have been paid for all hours after the 16 hours were worked. However, we find that Rule 14 contained an exception not contained in Rule 15 here. The Rule in Award 20093 provided that double time was payable for all hours after 16 hours were worked “in any 24 hour period beginning at the starting time of the employee’s regular shift on any day except:

- (a) Time spent in traveling and waiting.
- (b) Employes required to work continuously from one regular work period into another shall receive overtime rates on the basis of this Rule until relieved from the work which necessitated the overtime and pro rata rates for the remainder of the time worked during the regular assigned work period . . . .”

The finding in Award 20093 was based specifically on this exception “(b).” The Board there wrote “. . . the Rule states that double time payment will be continued until relieved from work which necessitated the overtime.” Reliance on the exception was the basis for the findings there. Here, Rule 15 does not contain such an exception and none can be added simply because of the similarity of the facts or other contract language. Nothing in Rule 15 provides for continuous double time payments beyond the applicable 24-hour period as defined therein.

Based on the foregoing, the Board finds that the record lacks the requisite substantial evidence that the Carrier violated Rule 15 of the Agreement.

**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 16th day of June 2014.