

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42344
Docket No. MW-41375
16-3-NRAB-00003-100204

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes –
(Division IBT Rail Conference
(BNSF Railway Company (former St. Louis-San
(Francisco Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Messrs. T. Berkey, C. Saylor, Q. Gambler and G. Hill for standby service on July 7, 8 and 9, 2007 [System File B-968-6/12-07-0117(MW) SLF].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Berkey, C. Saylor, Q. Gambler and G. Hill shall now each ‘... be paid; 12 hours overtime on July 2, 2007, four (4) hours overtime and 20 hours double time on July 8, 2007, and 20 hours double time on July 9, 2007, each, at their respective rates, as settlement of this claim.’

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 essential facts of this case are not in dispute. At the time of the incident leading to the claim, the Claimants were assigned to their regular positions on Bridge and Building Gang BBCX0107. On June 29, 2007, a derailment occurred due to a washout at Milepost 529.56 as a result of flooding on the Creek Subdivision. The Claimants' Bridge and Building gang was used to assist with track structure repairs on the right-of-way due to high water at several locations throughout the territory. On July 7, 2007, the Claimants were informed by Supervisor Greg Platt to perform standby service on their rest days - July 7, 8 and 9, 2007.

By letter of September 13, 2007, the Organization notified the Carrier that the Claimants' pay had been cut by the Payroll Department for overtime and standby service provided on July 7, 8 and 9, 2007. Specifically, the Organization's claim alleged that Supervisor Platt informed the Claimants that "they would be charging overtime for this if working or on standby but that they would not charge double time unless they actually worked the double time." In support of its position, the Organization pointed to Rules 2, 3, 4, 71(i), 72(a) and 72(b) of the 1975 Agreement. The claim was subsequently denied by the Carrier under date of November 8, 2007.

The Organization further appealed the Claimants' standby service claim, which continued to be denied by the Carrier. The claim was subsequently appealed, up to and including conference on the property on September 25, 2008, after which it remained in dispute.

It is the position of the Carrier that the Organization not only failed to provide evidence, it also failed to state how each alleged Rule was violated. Specifically, it contends that "standby" pay is not mentioned in Rules 71 and 72, or anywhere throughout the entire 1975 Agreement. The Carrier contends there is no punitive pay for standby service such as performed by the Claimants in this case.

The Carrier argues that Supervisor Platt never agreed to a level of payment or number of hours. In particular, the Carrier points to a statement provided by him noting that the Claimants would be paid for their time, but did not promise overtime or straight time. Moreover, the Carrier protests that no work or service was

performed by the Claimants and that they were sent home and required to be available on an as needed basis. Accordingly, the Carrier urges the denial of the claim was justified.

At the outset, the Organization argues the claim was timely filed in accordance with the Agreement. It notes the Carrier first mailed notification letters to the Claimants on August 18 and 24, 2007 informing them that their overtime and standby services on July 7, 8, and 9, 2007 were disallowed and that their pay would be adjusted accordingly.

The Organization insists there is no dispute whatsoever that the Claimants were assigned by the Carrier to perform standby service from July 7 through July 9, 2007. In particular, it asserts the Claimants were informed by Supervisor Platt to return home, but remain on call for further assistance within two hours. Due to standby status, the Claimants alleged they were unable to fulfill family and outside obligations on their regularly scheduled rest days. Additionally, the Organization contends that the Claimants were never informed that they were released from their assignment on standby status. In support of its position, it points to a statement provided by Claimant T. Berkey, and emphasizes this account was unrefuted by the Carrier.

The Organization protests the Carrier's defense that the Agreement is devoid of language providing compensation for standby service. It highlights numerous Awards stressing a Carrier's obligation to pay for the right to direct and supervise the time of its employees, including wait time and standby services. For these reasons, the Organization urges the claim be sustained.

The Board carefully reviewed all the evidence. The record clearly established that the Claimants were required to perform a service for the Carrier on the dates in question. Specifically, we draw attention to Supervisor Platt's statement:

"I was instructed to keep people who lived fairly close to the troubled area 'on call' while they were off so if the track failed again we could get people there within 2 hours or so. I asked the employees who lived closest to the area to be available if needed"

Although the Claimants returned home, the Carrier's expectation was that the Claimants were to be available and provide service if needed. In light of the foregoing,

and under the unique circumstances of the case, we find that the Carrier's denial of compensation for standby service was improper.

The Claimants shall each receive their respective straight time rates of pay for their standby service performed on July 7, 8, and 9, 2007. However, Claimant G. Hill's claim is dismissed pursuant to his signed release provided by the Carrier at the Referee Hearing.

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 28th day of July 2016.