

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43069
Docket No. MW-44184
18-3-NRAB-00003-170072**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on April 17 and 18, 2015 when the Carrier failed to compensate A. Bendigo for time held out of service pending the results of a drug test (Carrier’s File NEC-BMWE-SD-5401 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Bendigo shall be compensated twenty-four and one-half (24.5) hours at the applicable overtime rate and one (1) hour at the applicable double time rate.”**

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to compensate the Claimant for time held out of service pending the results of a drug test administered after an incident on April 17, 2015. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant is entitled under Rule 69 to be paid at the overtime and double time rates for all hours that his gang worked during the claim period, because there is no merit to the Carrier's defenses, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Claimant was medically disqualified for the dates claimed pending results of reasonably required drug and alcohol testing, because the Claimant should not have been paid overtime for the dates in question, because Rule 69 does not apply to the instant case, because the Organization failed to meet its burden of proof, and because the requested remedy is inappropriate.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to compensate the Claimant for the time that he was held out of service pending the results of a drug test that was administered to him as a result of being involved in a workplace accident. Therefore, this claim must be denied.

This claim was filed seeking eight and one-half hours at the overtime rate, as well as another sixteen hours at the overtime rate and one hour at the double-time rate for the next day that the Claimant did not work because he was not eligible to work as a result of the drug and alcohol test. However, Rule 69, which the Organization relies upon, does not apply to the case at issue. Rule 69 applies to employees who are held out of service pending a trial and decision. The Claimant in this case was not held out of service for that reason but was held out pending the results of a drug and alcohol test.

The record further reveals that the Claimant was compensated for the time he missed pending the drug and alcohol test. There is nothing in the Agreement that requires that the Claimant be paid at the overtime or double-time rate.

Since the Organization bears the burden of proof in cases of this kind, and the Organization has failed to meet that burden, the Board has no choice other than to deny the claim. Therefore, this claim must be denied.

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 2nd day of May 2018.