Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 43750
Docket No. MW-44995
19-3-NRAB-00003-180490

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Dakota, Minnesota & Eastern Railroad Corporation

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. J. Lee, K. Nicola, C. Dressin, B. Faur and Z. Duerksen for work performed outside of their regularly scheduled hours on January 11, 2017 and January 12, 2017 (System File B-1715D-201/USA-BMWED_DM&E-2017-00014 DME).

(2) As a consequence of the violation referred to in Part (1) above, Claimants J. Lee, K. Nicola, C. Dressin, B. Faur and Z. Duerksen shall now each '* be compensated for nine (9) hours of double time rate for January 12, 2017, as stated earlier in the claim, at the applicable rates of pay.' (Emphasis in original)." "**

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 Claimants worked from 0700 hours until approximately 2330 hours on January 11, 2017, according to the Organization, and reported their payroll time as ten (10) hours straight time, Six (6) hours overtime and a half (1/2) hour double time. Per instructions, they reported at 0900 hours on January 12, 2017 and reported payroll time as two (2) hours straight time and nine (9) hours double time. Manager Zach Scott, who approved the time, moved to a new position on January 13, 2017 and was replaced by Manager Matt Weller, who disapproved the time for January 12, 2017 and instructed the Claimants to report ten (10) hours straight time and one (1) hour overtime. By letter dated February 25, 2017 the Organization filed a claim on behalf of the five (5) Claimants. The claim was properly processed on the property without resolution and was timely progressed to this Board for final adjudication.

The Organization insists that Rule 15, Part 4 is clear and unambiguous and should be applied by the Board as written. The Claimants did not get the required ten (10) hours rest before returning to work on January 12, 2017. Starting time for January 12, 2017 was not the hotel, but the point at which they met the Carrier truck that they were using to travel to various locations where they were to work. The original payroll times were approved by Manager Scott.

The Carrier asserts that the Claimants had the required ten (10) hours of rest because the January 11, 2017 end time of 2330 hours is erroneous since the shift actually ended at 2239 hours when the Claimants' track warrant expired and the Carrier truck was parked for the night in Lansing, IA. "Rule 24 . . . does not allow non-headquartered employees travel time." The Claimants were non-headquartered employees. Documentation shows that the wages the Claimants were paid for January 12, 2017 included two (2) hours of overtime and nine (9) hours of double time—payment that was appropriate and accurate.

This is the second of two claims relating respectively to hours of work on January 11 and 12, 2017. On January 11 the Claimants worked from 0700 hours until 2239 hours as determined by this Board (see NRAB-00003-180523). Because of the long

workday, starting time for work on January 12 was moved from 0700 to 0900 hours. The Organization contends that because the January 11 workday actually ended at 2330 hours, the Claimants did not have the required ten (10) hours' rest between the two workdays. The Carrier contends that because the workday ended at 2239 hours on January 11, the Claimants received the required ten (10) hours of rest. The dispute involves the interpretation of Rule 15 – Overtime, Part 4 which states in relevant part that:

> **"An employee who has to work more than sixteen (16) hours in any twenty-four (24) hour period cannot be called back to work until he has received a minimum of ten (10) hours rest. If the ten (10) hour rest period includes any part of the employee's regularly assigned work assignment, the employee shall be compensated for that time at the pro-rata rate. The employee shall not report to work prior to ten (10) hours rest unless specifically authorized. If an employee is called back to work after working more than sixteen (16) hours without receiving ten (10) hours rest prior to being called back, the affected employee will remain on double time until he received ten (10) hours rest. The double time continuation will not apply unless authorization is obtained by the employee."**

Interpretation of Rule 15, Part 4 cannot be divorced from consideration of the intent of the Rule, which the Board views as aimed at ensuring to the extent possible a safe operation. The parties and the public have a stake in a work force that is well-rested and alert so that lack of proper rest does not result in operational errors that lead to property damage, serious injury or even loss of life. The glaring weakness in the Carrier's case is that it has divided the workday into scheduled and non-scheduled hours, lumping travel time into non-scheduled hours. While in NRAB-00003-180523 the Board ruled that there are circumstances in which travel time is not compensable, that ruling does not establish travel time as the equivalent of rest time. Even when employees may doze off in a vehicle, the Board does not find such travel time as consistent with the rest contemplated by Rule 15, Part 4. Defining "rest" as the Carrier has done may well result in negating the ten (10) hour rest requirement.

Former Manager Scott's decision to move the January 12 starting time from 0700 hours to 0900 hours was surely made in good faith to try to comply with Rule 15, Part 4

and is viewed as laudable. He was simply operating with a faulty definition. The Carrier has not disputed the assertion that travel lasted until 2330 hours on January 11. Considering that it took approximately one (1) hour to travel from the hotel to the work site on January 12, the Claimants actually got closer to eight and one-half (8½) hours of rest rather than the required ten (10) hours. Therefore, the claim must be sustained and the Claimants compensated in accordance with Part (2) of the Statement of claim set forth above.

AWARD

Claim sustained.

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 16th day of July 2019.

CARRIER MEMBERS' DISSENT

to

THIRD DIVISION AWARD 43750 - DOCKET 44995

(Referee I.B. Helburn)

The Majority erred in its findings in this case. Specifically, the Majority erred in its interpretation and findings of the definition of "rest" related to Rule 15 of the Agreement.

Under Rule 15, employees who work more than sixteen (16) hours in a twenty-four (24) hour period will be compensated at double-time rate. If the employee is called back to work without a minimum of ten (10) hours rest after working more than sixteen (16) hours, that employee will receive double-time until they the employee has received then (10) hours rest. Rule 24 of the Agreement states that non-headquartered employees are not entitled to travel time.

The Majority has created an entirely new standard for "rest" outside of the terms and conditions within the controlling Agreement. There is no Agreement language or precedent supporting the interpretation of "rest" to include time spent traveling from the worksite to lodging. Had the parties intended for "rest" to be defined as the majority has defined it, they would certainly have memorialized that understanding in the Agreement.

Defining "rest" as the Majority has done is akin to concluding that the commute to and from the workplace should be considered when determining the appropriate time off between shifts, creating the potential for undue burdens and a restriction to the Carrier's right to schedule and assign forces. In this award, the Majority created a standard not contemplated by the Agreement or the Industry. Accordingly, this award should be given no precedential value.

Joe Matthes

Joe Matthes

Jeanie L. Arnold

Jeanie L. Arnold

September 4, 2019