

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43754
Docket No. MW-45023
19-3-NRAB-00003-180523**

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 to properly compensate Messrs. J. Lee, K. Nicola, C. Dressin, B. Faur and Z. Duerksen for work performed outside their regularly scheduled hours on January 11, 2017 (System File B-1715D-202/USA-BMWED_DM&E-2017-00015 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 30 minutes at overtime rate and 30 minutes at double time rate for January 11, 2017 from 22:30 until released at 23:30, 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 reported for their 0700 hours assignment on January 11, 2017 and worked ten (10) hours, which was their regularly assigned workday. They were then instructed to continue working until they gave up their track warrant at 2239 hours, when they left the job site. The Organization states that the assigned duties were completed at approximately 2330 hours. Then Manager Z. Scott approved the reported payroll time of ten (10) hours straight time, six (6) hours overtime and one-half (1/2) hour double time. On January 13, 2017, M. Weller became the Claimants' manager, as Manager Scott had taken a new position. Manager Weller informed the Claimants that he had denied the previously-approved payroll time and instructed them to report the time for January 11, 2017 as eleven (11) hours straight time and six (6) hours overtime. By letter dated February 25, 2017, the Organization filed a claim on behalf of the above-noted Claimants. The claim was properly progressed on the property and when it was not resolved, further progressed to this Board for final adjudication.

The Organization avers that Rule 15, Part 2 is clear on overtime payment. The Claimants worked from 0700 hours until they were released at 2330 hours—a total of sixteen and one-half (16.5) hours. Manager Scott approved the original payroll time entries. The Board must apply the Agreement as written. The Carrier's reasons for denying the claim are irrelevant and off point. The Organization has never asserted that the starting location for January 11, 2017 was the hotel where the Claimants were staying. Their day began and ended at the Carrier truck used to convey them to their various work locations. The Carrier's reference to Rule 24 is an attempt to "muddy the waters" and confuse the Board.

The Carrier contends that the Organization has calculated time from the wrong location. The work did not end at 2330 hours on January 11, 2017 because travel time is not allowed. The shift ended at 2239 hours when the Claimants gave up their track warrant. The job site was Lansing, IA, where the truck was parked.

This is one of two related claims for overtime and double-time payment respectively on January 11 and 12, 2017. While the claims are related, they can and must be resolved independently of each other. The Parties agree that on January 11 the workday began at 0700 hours. The Organization asserts that the workday ended at 2330 hours when the Claimants apparently reached their hotel. The Carrier asserts that the

workday ended at 2239 hours when the Claimants gave up their track warrant. The relevant rules are Rule 15 – Overtime, Parts 2 and 4 and Rule 24 – Meals Lodging and Travel Expense, Part 5(a). Rule 15, Part 2 states in relevant part that overtime will be paid based on actual hours worked beyond regularly scheduled hours in a given day. Rule 15, Part 4 states in relevant part that work in excess of sixteen (16) hours in a given day be compensated at the double-time rate. Rule 24, Part 5(a) states that “A headquartered employee required to be away from his headquarters for multiple days will be entitled to travel time at the straight time rate for the first and last day of the work cycle, if such travel is authorized to be done outside of the employee’s regular shift.”

The Organization does not contend that January 11 was the first day of the work cycle and it obviously was not the last day. Rule 24, Part 5(a) says nothing about travel time for other days in the work cycle so that this Board cannot, without creating new contract language, indicate that travel time payment on January 11 was intended or authorized even though it is obvious that the Claimants had to have traveled from their work site to their temporary lodging. Nonetheless, the record evidence, including Rule 24, Part 5(a) does not support a finding that travel time should be considered as part of the work cycle/workday. In fact, the Organization’s submission states that “On January 11, 2017, Claimants reported for their assignment at 7:00 A.M. . . .” Notably, the submission does not contend that the workday began when travel from the Claimants’ temporary lodging to the job site commenced. The Board therefore concurs with the Carrier’s assertion at the workday ended at 2239 hours. On January 11, 2017 the Claimants worked for fifteen (15) hours and thirty-nine (39) minutes and were compensated in accordance with 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 July 2019.