

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5244

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
)	Case No. 23
and)	
)	Award No. 18
NORTHEAST ILLINOIS REGIONAL COMMUTER)	
RAILROAD CORPORATION (A PUBLIC CORPORATION))	
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Martin H. Malin, Chairman & Neutral Member
R.C. Robinson, Organization Member
J.S. Morse, Carrier Member

Hearing Date: January 28, 1994

STATEMENT OF CLAIM:

1. That Carrier violated the Agreement when it failed and refused to compensate Water Service Mechanic J. L. Randolph at his double time rate of pay for service performed on April 14, 1992.

2. As a consequence of the violation referred to in Part (1) above, Claimant J. L. Randolph shall be compensated at his double time rate of pay in compliance with Rule 18(c), i.e., for time worked in excess of sixteen (16) hours following the beginning of his regular starting time until released for at least ten (10) hours.

FINDINGS:

Public Law Board No. 5244, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 13, 1992, Claimant worked his regular eight-hour shift at the Western Avenue Yard. He then went to the Randolph Street Station, where he worked sandbagging and pumping flood water from the station. Claimant left the Randolph Street Station at 11 p.m.

Claimant was paid for working until 11:30 p.m. This amounted to eight hours at time and one-half. Claimant

alleges that he actually worked until 11:45 p.m. He maintains that he returned to Western Avenue at 11:15 or 11:20 p.m. and worked until 11:45 p.m. putting equipment away. Furthermore, Claimant contends that he did not receive a meal break during the second eight hours that he worked on April 13, and should be able to add the twenty-minute meal break which he should have been provided to his total time worked on April 13. Either the addition of the meal break or the correction of Claimant's departure time to 11:45 would place Claimant into double-time and trigger Rule 18(C).

Carrier contends that Claimant was paid for eight hours of straight time and eight hours of time and a-half and never entered double-time on April 13. Carrier contends that Claimant's supervisor saw Claimant at Western Avenue at 11:15 p.m. on April 13, advised Claimant that he would be allowed fifteen minutes to put equipment away and further advised Claimant that he could not increase his time worked by the missed meal break to get into double-time. Carrier also raises procedural objections to Claimant's contention based on the missed meal period.

The Board recognizes that Carrier has offered no statements from Claimant's supervisor or other documentation in support of its position. Carrier, however, is not raising any type of affirmative defense. The burden of proving the instant claim rests with Claimant. The record on the property contains an unsigned, undated, hand-printed statement in Claimant's name, supporting Claimant's version of the facts. Claimant did not file a claim for compensation for the period from 11:30 p.m. through 11:45 p.m. Claimant also did not file a claim for compensation for the missed meal break. The Board concludes that Claimant failed to carry his burden of proving that he rendered compensated service beyond 16 hours on April 13, 1992.

AWARD

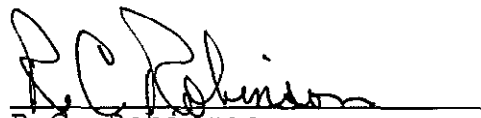
Claim denied.



Martin H. Malin, Chairman



J.S. Morse
Carrier Member



R.C. Robinson,
Organization Member

Dated at Chicago, Illinois, February 28, 1994.