

PUBLIC LAW BOARD NO. 2774

Award No. 147
Case No. 147

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. The Carrier violated the provisions of the current agreement between the Atchison, Topeka and Santa Fe Railway Company and its employees represented by the Brotherhood of Maintenance of Way Employees when on July 31, 1984, it caused employees of Extra Gang No. 23 to suspend work during their regular assigned hours for the purpose of absorbing overtime.
2. That the Carrier shall not be required to allow Foreman E. J. Blado and the eleven (11) members assigned to Extra Gang No. 23 and one (1) welder each four (4) additional hours at the prorata rate of pay."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimants herein were assigned to an extra gang with irregular assigned working hours, Monday through Friday, 6:00 A.M. to 2:30 P.M. On July 30, 1984, claimants started to work at 6:00 A.M. and, due to a derailment, worked continuously until 1:30 A.M., July 31, when they were released from duty. Carrier asserts that in order to provide eight consecutive hours off, claimants were instructed to report for their regular assignments on July 31 at 10:00 A.M. (instead of 6:00 A.M.) For service on their regular assignments on July 31, claimants were paid eight straight-time hours even though they only worked four hours.

Petitioner relies on the following rules in support of its claims:

Rule 33(b), 33(k), 15(a), 34(a), 33(e), 35(e)
and 35(d).

Petitioner argues that claimants were deliberately required to suspend work during their regular assignments for the purpose of absorbing overtime. The Organization maintains that Carrier is incorrect in construing Rule 33(k) as permitting it to suspend employees from the regular assigned hours provided they have not started to work. It is urged that Rule 33(k) must be assessed and interpreted in the context of the entire agreement, particularly Rules 33(e), 34(a) and 35(d).

Petitioner argues further that Rule 34(a) prohibits Carrier from reducing the work day below eight hours. In addition, Rule 33(e) prevents Carrier from using the four hours not worked on July 31 (and paid for) in completing the forty hours per week. Finally, it is urged that Carrier deliberately changed the gang's regular starting time without the 36 hours notice required by Rule 35(e) for the sole purpose of absorbing overtime.

Carrier states that in order to discontinue payment of double time (time and one-half during regularly assigned hours) it instructed claimants, after being released at 1:30 A.M., to report for duty at 10:00 A.M. rather than the normal starting time of 6:00 A.M. to provide for eight consecutive hours off duty. Carrier maintains that it did not violate Rule 34(a) since claimants were compensated with eight hours pay for the period from 6:00 A.M. to 2:30 P.M. It is also averred by Carrier that Rule 33(d) was not breached since that rule provides for the action which Carrier took to limit its liability under the overtime provisions of the rule. Carrier also argues that it did not violate Rule 33(k) since claimants did not suspend work after starting their regular assignments on July 31.

Carrier also states that Rule 35(e) was not violated in that claimants' assigned starting time was not changed within the intent and meaning of that rule. In this situation, according to Carrier, claimants were allowed time off from 6:00 A.M. to 10:00 A.M. and ended their day at the regular 2:30 P.M. quitting time but were compensated for eight hours. Carrier concludes that its actions were not prohibited by any of the rules in the agreement; on the contrary, the action

taken by all three claimants, eight hours off prior to starting their regular assignments, was to avoid payment of time and one-half during regularly assigned hours of service and was proper and in accordance with the provisions of Rule 33(b).

The circumstances surrounding this dispute appear to be unique. After a careful evaluation of the arguments (the facts are not in dispute), the Board does not believe Carrier's position is sound.

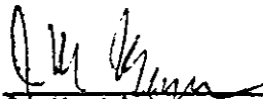
Carrier cannot have it both ways. If claimants only worked from 10:00 A.M. to 2:30 P.M. on July 31 as Carrier maintains, then their regular starting time was changed without notice in violation of Rule 35(e). If on the other hand their starting time was not changed, as Carrier avers, there was clearly a violation of Rule 33(k). There also appears to have been a breach of Rule 34(a) in that less than eight hours were worked by claimants on their regular assignment on July 31. Carrier's motive in limiting its premium pay liability is clear but its method of accomplishing this goal was flawed. The claim must be sustained.


AWARD

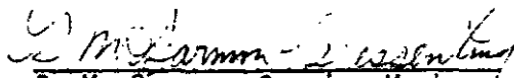
Claim sustained.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member


G. M. Garmon, Carrier Member

Chicago, Illinois
February , 1986