

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENTS OF CLAIM:

Case No. 3 (Claim No. MW-96-4):

1. The Agreement was violated when the Carrier failed and refused to properly compensate Trackman R. M. Dunbar for overtime service performed on Saturday, March 9, 1996 after 0700 hours.
2. As a consequence of the violation referred to above, Trackman R. M. Dunbar shall be paid the difference between the time and one-half and double time he should have received from 0700 hours until he completed his assignment on March 9, 1996.

Case No. 4 (Claim No. MW-96-5):

1. The Agreement was violated when the Carrier failed and refused to properly compensate B&B Foreman Robert A. Ridgell, Jr., for overtime service performed on March 8 and 9, 1996 at Rigby Yard, South Portland, Maine.
2. As a consequence of the violation referred to above, B&B Foreman Robert A. Ridgell, Jr., shall be paid the difference between the time and one-half and double time he should have received from 2300 to 2330 hours on March 8, 1996 and from 0700 to 0930 hours on March 9, 1996.

Case No. 5 (Claim No. MW-96-6):

1. The Agreement was violated when the Carrier failed and refused to properly compensate Trackman J. P. Tracy for overtime service performed on Saturday, March 9, 1996 after 0700 hours.
2. As a consequence of the violation referred to above, Trackman J. P. Tracy shall be paid the difference between the time and one-half and double time he should have received from 0700 hours until he completed his assignment on March 9, 1996.

Case No. 6 (Claim No. MW-96-7):

1. The Agreement was violated when the Carrier failed and refused to properly compensate Trackman B. L. Jordan for overtime service performed on Saturday March 9, 1996 after 0700 hours.
2. As a consequence of the violation referred to above, Trackman B. L. Jordan shall be paid the difference between the time and one-half and double time he should have received from 0700 hours until he completed his assignment on March 9, 1996.

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The dispute at issue concerns a determination as to whether the Claimants are entitled to, as claimed, the double time rate of pay for work performed between 7:00 a.m. and 9:30 a.m. on Saturday, March 9, 1996.

The Claimants held 7:00 a.m. to 3:30 p.m. work assignments, Monday through Friday, with Saturday and Sunday as designated rest days.

On Friday, March 8, 1996, the Claimants were assigned to clean switches in Rigby Yard in Portland, Maine. The Claimants began work at their regular starting time of 7:00 a.m. on such date, and continued performing service until 9:30 a.m. on Saturday, March 9, 1996.

The Carrier compensated the Claimants at the straight time rate of pay for eight hours of service during the period 7:00 a.m. to 3:30 p.m.; eight hours at the time and one-half rate of pay for the period, 3:30 p.m. to 11:30 p.m.; seven and one-half hours at the double time rate of pay for the period 11:30 p.m. to 7:00 a.m.; and two and one-half hours at the time and one-half rate of pay for the period 7:00 a.m. to 9:30 a.m.

It is the contention of the Organization that for the work period, 11:30 p.m. to 9:30 a.m., that the Claimants are entitled to double time pursuant to Article 10 of the Schedule of Agreement Rules.

Article 10, Overtime, of the current Agreement reads as follows:

- 10.1 Time worked preceding or following and continuous with a regularly assigned work period shall be computed on the actual minute basis and

paid for at the time and one-half rate, with double time on an actual minute basis after sixteen (16) hours of work in any twenty-four (24) hour period (computed from the starting time of the employee's regular shift), except that overtime shall automatically cease and the pro rata rate shall apply at the starting time of the employee's next regular assigned work period.

10.2 Employees called to perform work not continuous with the regular work period will be allowed a minimum of 3 hours at the time and one-half rate and, if held on duty in excess of 3 hours, they will be paid on a minute basis at the time and one-half rate for all time.

10.3 Time worked on rest days and holidays will be paid for at the time and one-half rate with double time on an actual minute basis after sixteen (16) hours of work until relieved or until commencement of the employee's next regular assigned work period, whichever occurs first. Such continuous time worked after commencement of the next regular assigned work period shall be paid at the pro rata rate, pursuant to Paragraph 10.1 of this Rule.

It is the position of the Organization that pursuant to Article 10 as long as the overtime, in this case double time, was being performed continuous with the regularly assigned work period that the employees remain on double time pay until the exception in Article 10.1 kicks in, i.e., the employee enters the starting time of his or her next regular assigned work period, which, in the claims here at issue, the Organization submits was Monday, March 11, 1996.

The Carrier maintains that the language of Article 10.1 terminates the double time rate of pay at the end of the "twenty-four (24) hour period (computed from the starting time of the employee's regular shift)." In this regard, the Carrier says that the twenty-four hour period for the Claimants ended at 7:00 a.m. on Saturday, March 9, 1996, and so did the payment of double time.

The Carrier says that the hours involved in these claims (7:00 a.m. to 9:30 a.m. on Saturday, March 9, 1996) are rest-day hours and, further, that the double time language of Article 10.3 likewise does not have application to the period of time here in dispute. It says that a reading of Article 10.3 shows that whereas it applies to time worked on rest days and holidays, that the double time rate of pay starts and remains in effect only after sixteen (16) hours have been worked on those rest days and holidays. Here, the Carrier says, the Claimants only worked two and one-half hours on their Saturday rest day, from 7:00 a.m. to 9:30 a.m., and not the sixteen hours on a rest day that would entitle them to the double time rate of pay.

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Both parties agree that if an employee works continuously through both rest days, i.e., Saturday and Sunday, that such employee is entitled to the time and one-half rate of pay of the first 16 hours of work and thereafter the double time rate of pay until the start of the employee's regularly assigned work time on Monday, when the employee would be paid the straight time rate of pay for the first eight hours of work.

It is elementary in giving meaning to a contract or agreement that the terminology used by the authors of the document be considered in the context in which such language appears. In the dispute here at issue, it is necessary to give recognition to the meaning and intent of the words, "regularly assigned work period" and "regular assigned work period" as used in Article 10.

In our opinion, these two terms, as used in Article 10, are synonymous. They basically set forth a state of the art recognition of the eight-hour period of time that an employee is regularly assigned to work on each of the five work days of a work-week. We do not read the use of such language or terminology in the agreement at issue to likewise define the time constraints of rest days as being limited to a designated or regularly assigned eight-hour time period.

Where an employee has an assigned starting time, the work day is generally recognized to be the 24-hour period following the commencement of such starting time. Although a rest day likewise commences 24 hours after the start of the regular assigned work period, a rest day, unlike a regular assigned work-day, does not have a designated or regularly assigned eight-hour time period. The Board thus does not find the "exception" contained in Article 10.1 as to when overtime shall automatically cease and the pro rata or straight time rate of pay shall apply to have application to work that continues from the last regularly assigned work day of an assignment into a rest day. We say this in recognition of Article 10.1 specifically prescribing: "Time worked ... continuous with a regularly assigned work period shall be ... double time ... [and] automatically cease and the pro rata rate shall apply at the employee's next regular assigned work period."

As indicated above, the work giving rise to the dispute commenced with the starting time of a regularly assigned work period on a Friday, and continued into Saturday, which, coincidentally, was a rest day. It was not overtime work that was continuous with one regularly assigned work day into another assigned work day, i.e., Monday into Tuesday, where the 24-hour time period exception set forth in Article 10.1 as to when payment of the double time rate of pay would cease to be paid would have application.

The instant case also does not involve a situation where work ceased to be performed on a regularly assigned work day and the employees were subsequently called out to perform work on a rest day, where, regardless of the time that an employee is called out for work on a rest day, Article 10.3 prescribes that the first sixteen hours of work be paid for at the time and one-half rate of pay and the double time rate of pay thereafter until the commencement of the next regular assigned work period.

If the Board was to interpret the phrase, regularly assigned work period or regular assigned work period, as the Carrier suggests, then an employee who, after completing work on the last day of a regular work-week, was to be subsequently called out for work on a rest day, and continue such work into the second rest day, would only be entitled to the double time rate of pay for a maximum of eight hours before again being placed on the time and one-half rate of pay for the first 16 hours of work on the second rest day. Yet, as stated above, both the Carrier and the Organization are in agreement that in application of Article 10.3 that once the employee completes the first 16 hours of work on a rest day, the employee is to be paid double time until the commencement of that employee's regular assigned work period on the first day of his or her regularly assigned five-day work-week.

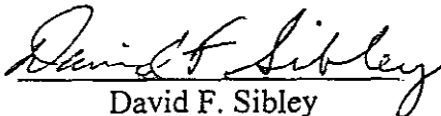
In the circumstances, the Board concludes that the contention of the Organization with respect to the issue here in dispute is correct. The claims will therefore be sustained in a finding that the Claimants are entitled to be compensated for work performed during the time period of 7:00 a.m. to 9:30 a.m. on Saturday, March 9, 1996, at the double time rate of pay since it was work that was continuous with a regular assigned work period and not work, per se, for which they had been specifically called out to perform on a rest day.

AWARD:

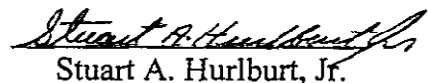
Claims sustained.



Robert E. Peterson
Chair & Neutral Member



David F. Sibley
Carrier Member



Stuart A. Hurlburt, Jr.
Organization Member

North Billerica, MA
April 16, 1998