

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163**

Brotherhood of Maintenance of Way)	
Employes Division, IBT)	
)	
vs.)	Case No. 137
)	
CSX Transportation, Inc.)	

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier did not provide the members of System Production Gang (SPG) C-7 with at least eight (8) hours of rest following their work day on February 28, 2012 and then failed to compensate them at their respective time and one-half pay rates for work performed on February 29, 2012 (System File SPG-C7-OT-02-28-2/12/2012-123852).
2. As a consequence of the violation referred to in Part 1 above, members of System Production Gang C-7 shall now receive the difference between their straight time and overtime rates of pay for all hours worked on February 29, 2012."

Background

The regularly scheduled ten (10) hour workday for System Production Gang C-7, hereafter referred to as Claimants, began at 6:00 a.m. on February 28, 2012. After completing their duties at 4:45 p.m. Claimants began moving their equipment to a location for storage. Due to traffic, they arrived at the storage location at 8:45 p.m. and at their hotel around 10:15 p.m. Claimants received a company paid meal and one (1) hour of compensation as they had worked through their meal period. The Carrier informed Claimants that they would depart from the hotel at 7:00 a.m. the next workday (February 29).

On April 14, 2012 the Organization filed a claim with the Carrier's highest designated officer (HDO) wherein it alleged a violation of Section 7 – Overtime in the Updated System Production Gang Agreement. Also, the Organization states that Claimants were not allowed eight (8) hours of rest prior to the regularly scheduled 6:00 a.m. start time on February 29, 2012.

On August 9, 2012 the parties convened a teleconference and two weeks later (August 24) the HDO denied the claim stating that Section 7 was inapplicable because Claimants did not work in

excess of sixteen (16) hours on February 28, 2012 and they were released for more than eight (8) hours prior to the beginning of their workday on February 29.

Carrier's Position

A production team such as C-7 reports for work and is released from work at the work location or worksite. Claimants began work at 6:00 a.m. on February 28 and were released from the worksite at 8:45 p.m. for a total of 14.75 hours. When Claimants returned to the hotel at 10:12 p.m., they received a company paid meal as well as one (1) hour of compensation for that meal time. The start time for the following workday (February 29) was set at 7:00 a.m. to ensure they received 8 hours release time.

According to the Carrier, the Organization did not meet its burden of proof to establish a violation of the Agreement, specifically, Section 7. In this regard, Section 7 applies only when an employee exceeds 16 hours of work. Since Claimants did not work more than 16 hours on February 28, 2012 Section 7 does not apply. Also, the next workday's start time was set at 7:00 a.m. to ensure eight (8) hours of release time so they do not receive overtime for February 29.

Should the Board find that Claimants worked more than 16 hours, they are not entitled to overtime on February 29 because they were released for at least 8 hours following the end of their workday (8:45 p.m.) on February 28 and reported for work at 7:00 a.m. on February 29. The claim should be denied.

Organization's Position

On February 28, 2012 Claimants' workday began at 6:00 a.m. They completed 16 hours of work at 10:00 p.m., received a company paid meal as well as 1 hour compensation for that meal time, and were not released until 11:45 p.m. The Organization asserts that Claimants worked from 6:00 a.m. to 11:45 p.m. for a total of 17 hours and 45 minutes. Further proof that Claimants worked in excess of 16 hours is the Carrier's statement that the gang left the job site at 10:45 p.m. on February 28, 2012 and payroll records confirm that Claimants worked in excess of 16 hours on February 28 because they received compensation for 17 hours.

Since the scheduled start time on February 29 was 6:00 a.m., they were released for 6 hours and 15 minutes (11:45 p.m. – 6:00 a.m.). Since they worked more than 16 hours and did not receive 8 hours release time, Section 7 mandates that Claimants receive time and one half for all work on February 29. The Carrier changed the start time to avoid paying overtime and, in doing so, violated Article IX (Starting Time) in the Imposed Agreement which requires 36 hours' notice prior to a change in start time. This also violated Section 7, Appendix S in the Update System Production Gang Agreement by forcing Claimants to absorb overtime for services rendered on February 29.

The Carrier ignores the 1-hour of compensation for meal time; Section 7 contemplates that the company paid meal is work time for the "simple fact that the Claimants had worked through their regular meal period." [Br. at 15] Had the Claimants received their evening meal during the regularly scheduled workday, they would have left the job site 1 hour later.

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this disputes were accorded due notice of the hearing and participated in this proceeding.

Section 7 – Overtime states:

- A. All hours in excess of 8 when working 8 hour days or in excess of 10 when working 10 hour days will be paid at time and one half rate. For time worked in excess of sixteen (16) hours following the beginning of the employee's regular starting time, the double time rate will apply until released for at least eight (8) hours or the beginning of the next regular work period, when time and one-half rate will apply for the following 16 hours, then double time for the next eight (8) hours.

Article IX - Starting Times, Section 1 – Production Crews states, in relevant part, that “[t]he starting times for production crews shall be between 4:00 a.m. and 11:00 a.m. and shall not be changed without thirty-six hours’ notice[.]”

Claimants comprise a production crew within the coverage of Article IX, Section 1. On February 28, 2012 Claimants worked from 6:00 a.m. to 8:45 p.m. for a total of 14.75 compensable hours. The workday concluded when Claimants left the job site. Receipt of one (1) hour straight time compensation for evening meal does not render meal time as work time; its 1-hour remuneration to Claimants recognizing the inconvenience endured for having foregone the meal period and working through it in service to the Carrier. Claimants received the appropriate compensation for hours worked on February 28. For February 29 Claimants departed from the hotel at 7:00 a.m.; however, they were compensated from the outset of their regularly scheduled 6:00 a.m. work day. On the basis of these findings drawn from the evidentiary record, there is no violation of Section 7 - Overtime or Article IX - Starting Times.

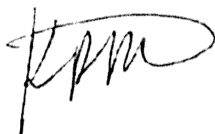
Since the evidentiary record does not support a finding favorable to sustain the claim, it will be denied.

Award

Claim denied.

Patrick J. Halter /s/

Patrick J. Halter
Neutral Member
Award No. 137



Rob Miller
Carrier Member



Andrew M. Mulford
Organization Member

Dated on this 9th day
of September, 2014