

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 8

Case No. 8

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to compensate the claimants for standby service rendered by each on February 14 and 15, 1985.

(2) Each of the claimants listed below now be compensated continuously from 5:30 P.M. February 14, 1985 until 7:00 A.M. February 15, 1985.

G. Cales	A. B. Pence
I. V. Gonzalez	C. R. Thacker
R. S. Twine	C. Stacy
R. D. Wilson	W. H. Strawser
J. E. Adkins	

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 5, 1988, in the Carrier's Office, Philadelphia, Pennsylvania, 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 by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The case arises from claims for additional compensation by members of Rail Recovery Gang RT-2 whose headquarters on the

claim date was at Bradford, Ohio.

At the pertinent times the Gang was assigned to a four (4) day week, 7 A.M. to 5:30 P.M., Monday through Thursday, with rest days of Friday, Saturday, and Sunday. The Gang was supervised by Foremen J. E. Rhodes and J. E. Adkins.

On Monday, Tuesday, and Wednesday, February 11, 12, and 13, 1985, the Gang worked at Summerville, West Virginia; on Thursday, February 14, in accord with Carrier instructions, the Gang travelled to Columbus, Ohio, to perform snow duty at Buckeye Yard.

The Gang arrived at Columbus at 5:30 P.M. on February 14, and obtained lodging at the Olentangy Inn. The Gang performed snow duty the next day, Friday, February 15, 1985, 7 A.M. til 10 P.M.

Up to this juncture, there is no fact dispute between the parties; however, there is a dispute on the fact question of whether the members of Gang RT-2 were told at 5:30 P.M. on Thursday, February 14, 1985, to remain at the Olentangy Inn and to be available for snow duty that night, as contended by the Organization; or whether they were not instructed to keep themselves available for snow duty that night, as the Carrier contends, but were told that they would probably be needed at 11 P.M.

The support for the Organization's contention is comprised of three (3) separate written statements: An August 7, 1985 statement by Foreman John E. Rhodes, Attachment 1-Employee Exhibit A-6; an April 22, 1985 statement by seven (7) Claimant Trackmen,

Attachment 2-Employee Exhibit A-6; and a November 4, 1985 statement by Foreman J. E. Adkins, Attachment to Employee Exhibit A-7.

The support submitted by the Carrier for its contention is a written statement from Foreman John E. Rhodes attached to the October 10, 1985 denial letter from the Carrier's highest appeal officer.

After due study of the conflicting evidence in the record as a whole, the Board concludes and finds that the claims have merit and that they should be sustained as hereinafter provided.

In reaching this decision the Board has closely examined the statement of Foreman Rhodes attached to the Carrier's October 10, 1985 letter; however, this statement, in which Foreman Rhodes attempts to unsay what he said in his August 7, 1985 statement, is insufficient to rebut the evidence provided by the written statements of the Claimants and Foreman Adkins. The Board is therefore satisfied that the evidence in the record as a whole satisfactorily establishes that the members of Recovery Gang RT-2 were instructed to be available for snow duty during the night of February 14 and that in consequence, notwithstanding that the Carrier did not exercise its option to call them for work til 7 A.M. on February 15, the Board holds that the Claimant gang members remained on duty for pay purposes from 5:30 P.M. til 7 A.M. the following day, February 15.

As regards the remedy, since the original claim requested compensation at the straight rate, the claims will be sustained at

the straight rate and not at the overtime rate as requested by the organization subsequent to the filing of the initial claim.

In view of the foregoing, and based on the record as a whole, the claims will be sustained at the straight rate.

AWARD

Claims sustained at the straight rate as per the Opinion.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



R. O'Neill, Carrier Member

Executed on December 5, 1989

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