

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
E. N. JACOBS, JR., CARRIER MEMBER
RICHARD A. LAU, ORGANIZATION MEMBER

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

Award No. 69
Case No. 69

Date of Hearing - October 17, 1996
Date of Award - April 21, 1997

Statement of Claim:

1. The Carrier violated the Agreement when it failed to properly compensate Machine Operator R. B. Ratliff for overtime service performed on June 18, 23, 24, 28, 29, 30 and July 1, 1995.
2. As a consequence of the violation referred to in Part 1 above, Machine Operator R. B. Ratliff shall now be allowed eleven (11) hours pay at the bulldozer operator's double time rate and thirteen (13) hours pay at the half-time rate to equal the bulldozer operator's double time rate he should have received.

(Carrier File MW-PAB-1995-1)

FINDINGS:

Special Board of Adjustment No. 1048, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On the dates involved in this claim, Claimant was assigned as a bulldozer operator with a 10-hour day, Monday-Thursday work week, with Fridays, Saturdays, and Sundays as rest days. Due to heavy rain and severe flooding in central Virginia, Claimant was required to work overtime on the seven days noted in the Statement of Claim. When completing time slips for the overtime work, Claimant requested payment at double time for those hours beyond 16-hours on duty. Double time payment was denied by Carrier on the basis that

the "time worked was not performed continuous with a regular assigned work period."

Rule 39(a) of the Agreement is the operative rule in this matter. In pertinent part, that rule provides:

[T]ime worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of the employee's regular shift.

Carrier would apply this rule as only allowing double time on days on which an employee is assigned to work the hours of his regular assignment. The Carrier contends that the literal language of the Rule contemplates that in any 24-hour period in which an employee was not regularly assigned an 8-hour work period, double time payments are not required.

Such an interpretation is not only at odds with the literal language of the rule, but it is also at odds with its manifest purpose - provide an additional penalty to Carrier to inhibit working employees inordinately long hours without time off. Carrier is simply misreading the rule, when it suggests that the double time penalty is warranted only on days on which an employee was scheduled to work, but is not warranted on days not scheduled to work, even though the time on duty would exceed 16 hours. The underlying purpose of adopting a requirement for double time after 16 hours is to make it more costly for the Carrier to work an employee over 16 hours. It is not a bonus provision for performance, it is a penalty for excessive time on duty. Overtime is often referred to as penalty time. When Carrier works an employee over 16 hours the penalty increases from time and one-half to double time.

Carrier's argument in this matter is not new. Nearly fifty years ago the Third Division, NRAB, considered a similar carrier argument on the application of nearly an identical rule. It was rejected then, properly so.

In Award 5156, the NRAB noted:

The controlling provision of the Agreement is Article 4(a),
... which provides:

... Time worked preceding or following and continuous with the regular eight (8) hour work period, exclusive of meal period, shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from the starting time of the employee's regular shift.

Carrier contends that no provision is made for double time on Sundays and holidays under this rule. In this the Carrier is in error. The rule provides for double time after 16 hours' continuous service in any 24 hours period computed from the starting time of the employee's regular shift. This simply means that in computing double time for work in excess of 16 continuous hours of service, the starting time of an employee's regular shift constitutes the starting point of the 24 hour period whether during regularly assigned days or otherwise. The Rule does not mean that double time is allowable only on days on which the employee holds a regular assignment; it means that double time accrues in any 24 hour period which in which more than 16 consecutive hours are worked and, in determining the beginning of the 24 hour period, the starting time of his regular assignment will be used.

Fifteen months after Award 5156 was adopted by the Third Division, on March 19, 1951, the NRAB had a second occasion to consider a similar dispute, involving a similar argument, arising on a different carrier. In Award 5262, the Board noted:

In Award 5156, involving the Chicago and Eastern Illinois Railroad, this Board with the assistance of Referee Carter had occasion to consider a similar claim made by section men for double time for work on a day when they were not regularly assigned. We have reviewed the record in that docket. The facts therein presented are analogous to those herein insofar as the double time claim is concerned. The rule involved (except for minor deviation in wording not affecting its meaning) is the same. In that docket and in this, the respective contentions of the parties as to the meaning and application of the rule were essentially similar. The Board there held that the Rule does not mean that double time is allowable only on days on which the employee holds a regular assignment; it means that double time accrues in any 24-hour period in which more than sixteen consecutive hours are worked and, in determining the beginning of the 24-hour period, starting time of the regular shift will be used. We subscribe to the reasoning of that Award and, accordingly, hold that this claim should be sustained.

This Board also subscribes to the reasoning in Award as to the application of the Rule we are reviewing. From an uncomplicated reading, one that is not convoluted and twisted, a fair reading of Rule 39(a), can only mean that double time accrues in any 24-hour period in which more than sixteen consecutive hours are worked and, in determining the beginning of the 24-hour period, the starting time of the regular shift will be used.

The claim has merit. It will be sustained.

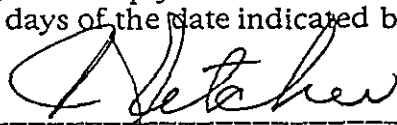
A W A R D

Claim sustained.


O R D E R

Carrier is directed to comply with this Award and make all payments due claimant within thirty days of the date indicated below.

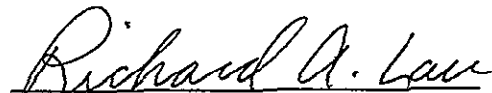
I dissent.



John C. Fletcher, Chairman & Neutral Member



E. N. Jacobs, Jr., Carrier Member



Richard A. Lau, Employee Member

Dated at Mt. Prospect, Illinois., April 21, 1997