

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 1

Case No. 1

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 Carrier violated the Agreement when it failed and refused to compensate Camp Cook R. K. Lindsay and Camp Car Attendant G. Marks for the one-half (1/2) hour their gang worked in excess of eight (8) hours per day beginning March 12, 1984 (System Docket CR-988).

(2) As a consequence of the aforesaid violation, Camp Cook R. K. Lindsay and Camp Car Attendant G. Marks shall each be allowed one-half (1/2) hours of pay at their respective time and one-half rates for each day, beginning March 12, 1984, on which their gang worked/works eight and one-half (8 1/2) hours.

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 herein claims are from a Camp Cook and Camp Car Attendant who claim overtime for each day on and after March 12,

1984 on which their gang worked over eight (8) hours.

The Organization asserts that on and after March 12, 1984, Gang TK-134 was instructed by the Carrier to work through its regular lunch hour¹; and that as a result of the Gang working more than eight hours daily, the Claimant Camp Cook and Camp Car Attendant for the Gang are entitled to be paid thirty (30) minutes overtime each day during the period in question under Rule 24 (c).

The Carrier asserts² that the claim lacks merit because the members of Gang TK-134 were properly paid straight time for working through their meal period under Rule 18, Section 1 (a) and (b); and that since the Gang was not paid overtime, Rule 24 (c) does not require overtime compensation to be paid to the Camp Cook and Camp Car Attendant.

Rule 24 (c), as pertinent here, reads as follows:

"(c)...Camp Cooks and Camp Car Attendants shall receive their daily rate as compensation for each day their gang works eight (8) hours ten (10) hours for four (4) day gangs). Except as stipulated in note below, on any day that their gang works more than eight (8) hours or ten (10) hours for four (4) day gangs, Camp Cooks and Camp Car Attendants shall be paid for time over eight (8) hours, or ten (10) hours, worked by their gang at the time and one-half rate, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period, computed from starting time of the gang.

¹ The regular tour of Gang TK-134 is 7 A.M. to 3:30 P.M., inclusive of a thirty (30) minute meal period.

² Although the Carrier submission disputes the fact that Gang TK-134 worked in excess of eight hours on the days in question, the Organization validly objects that this issue was not raised during the handling of the dispute on the property.

NOTE: The intent of this section is that if a gang works only eight (8) hours the Camp Cooks and Camp Car Attendants will receive only eight (8) hours' pay, but if the gang works ten (10) hours the Camp Cooks and Camp Car Attendants will receive two (2) hours' overtime the same as the gang. If the gang completes its day's work and has its evening meal, and the Camp Cooks and Camp Car Attendants are not required to remain on duty and prepare an additional meal, their time will be stopped. On the other hand, if the Camp Cooks and Camp Car Attendants are required to remain on duty and prepare another meal during the night for part or all of the gang which works during overtime hours, then the Camp Cooks and Camp Car Attendants will be paid overtime to the time of their release."

The Carrier submission suggests that overtime compensation must be paid to the Gang as a condition precedent to the right of Camp Cooks and Camp Car Attendants to receive overtime. However, the text of Rule 24 (c) does not support this construction. The operative verbiage in the rule which triggers the overtime compensation for Camp Cooks and Camp Car Attendants is that "...their gang works more than eight (8) hours". The governing standard in the rule is thus self-evidently based upon time worked and not upon whether the gang members are compensated at the overtime rate. The gang members worked through their regular lunch period, which resulted in their work time being thirty (30) minutes in excess of eight hours. The claim for overtime pay for this thirty minutes by the Camp Cook and the Camp Car Attendant, is therefore within the provisions of the rule.

In view of the foregoing, and based on the record as a

whole, the claim will be sustained.

AWARD

Claim sustained.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on 4/19, 1991

ADDENDUM BY REFEREE BLACKWELL

Carrier raised several objections to the foregoing proposed Award No. 1, Case 1, in the Board's Executive Session of August 22, 1990, conducted in Carrier's offices, Philadelphia, Pennsylvania; none of these objections afford a persuasive basis for changing any of the findings in the proposed Award.

For example, the Carrier objected to the validity of the proposed Award's express finding that "[t]he gang members worked through their regular lunch period, which resulted in their work time being thirty (30) minutes in excess of eight hours."

The basis of this finding is that during handling on the property the Organization made a clear cut fact assertion that Gang TK 134 worked eight and one-half (8.5) hours when it worked through the lunch period (Exhibits A and E, Carrier Submission); the Carrier's letters of response referred to various matters, e.g., that Rule 18 requires Cooks and Camp Car attendants to work through lunch period at straight time, but the Carrier made no direct challenge to the validity of this assertion.

Also, the Carrier objected to the finding, in footnote 2, page 2 of proposed Award No. 1, that the Carrier had not disputed on the property the Organization allegation that Gang TK 134 worked in excess of eight (8) hours on the days in question.

The Carrier bases this objection on an October 17, 1984 Carrier-General Chairman letter referred to in an October 23, 1984 Carrier-General letter, which latter is included as Exhibit F in the Carrier's original Submission in this case. However, the October 17 Carrier letter was not included in the Carrier's original Submission; it was submitted to the Board for the first time in the Board's August 22, 1990 Executive Session. Further, although the Exhibit F letter was handled on the property, the Exhibit F letter does not represent that the October 17 letter was attached to Exhibit F.

It must be concluded in these circumstances that the Oc-

tober 17, 1984 letter does not invalidate the finding in footnote 2 of the proposed Award. Inasmuch as the October 17 letter was not included in the Carrier's original Submission to the Board, and since the record has not been reopened to allow it to be included and considered, there is no authority or procedure cited of record that would permit said letter to be used on an after-the-fact basis to establish the Carrier contention that the Carrier had disputed the subject allegation during handling on the property. In addition, if the October 17, 1984 letter were considered at this time, its statement that the "gang did not work any overtime" would not demonstrate that the subject allegation in question was disputed by Carrier on the property, because the rules permit the Gang to work through lunch at straight time.

A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

Frederick R. Blackwell, Chairman/Neutral
Special Board of Adjustment No. 1016

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