

The Second Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. That the service rights of Carman Donald Meadows (hereinafter "claimant") and the provisions of Rules 6 and 7 of the controlling Shop Crafts Agreement were violated when on June 14, 1989 Carman Meadows was required to attend a mandatory Hearing Test required by the carrier, either one hour before the start of his regular shift, or one hour after his regular shift. The claimant was only paid straight time in violation of the aforementioned Rules.

2. Accordingly, the claimant is entitled to be compensated for one-half (1/2) hours' pay at the applicable Carmen's straight time rate for his attendance on June 14, 1989.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Effective July 24, 1987, Carrier instituted a Hearing Conservation Program at its Raceland Car Shops. This action was taken following citation by the Kentucky Department of Labor for violation of OSHA regulations regarding occupational noise exposure. As part of this program, Carrier conducted annual audiometric hearing tests on over 800 employees at the Shops. On the date of claim, numerous Carmen, including Claimant, were required to take such a test either during the hour before or after their regular shift. Carrier compensated these employees for one hour at the straight time rate. The Organization now seeks payment for the difference between the straight time and the overtime rate. Carrier asserts the payment for one hour was gratuitous, and not required by schedule Rules and Agreements.

At the outset, it is important for the Board to clarify the issue before it. The dispute herein does not present the question of whether or not Carrier is obligated, under the Agreement, to compensate Claimant for taking a hearing test outside the regular hours of his assignment. Additionally, the issue framed by the parties does not encompass the question of whether or not Carrier has the right, under the Agreement, to direct Claimant to take such an examination, compensated or not. The only issue before the Board concerns the application of Rules 6 and 7, which require the payment of overtime under specified conditions. The relevant portions of those Rules are as follows:

"Rule 6 - Effective Sept. 1, 1949. (a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

* * *

(d) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computation leading to overtime."

"Rule 7 (a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. For forty minutes or less continuous service after bulletin hours, one hour straight time will be allowed.

* * *

(d) Employees will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one hour - the advance period to be not more than one hour.

* * *

UNDERSTANDING - Effective June 1, 1923.

* * *

(3) Paragraph (d): The provision in this paragraph '... the advance period to be not more than one hour,' means that an employee may be started to work one hour or less before his regular starting time, and paid rate and one-half on the minute basis with a minimum of one hour for forty minutes service or less, but, if started in excess of one hour before his regular starting, he will be paid a call."

The above quoted provisions, as well as the remainder of the two Rules, refer to "work" or "service." The Carrier argues the time involved in this dispute is neither work nor service, as those terms are used in the Agreement. Carrier asserts Claimant did not perform any of the duties cited in the Carmen's Classification of Work Rule. It further submits the hearing test is merely part of a physical examination, which is not subject to compensation under the Agreement. The Organization, however, argues the compulsory nature of the examination requires it be considered compensated. Otherwise, the Organization suggests Carrier would be in violation of the Railway Labor Act by unilaterally changing the working conditions of the employees.

All time during which an employee is required to give up his own pursuits in order to satisfy a requirement of the Carrier is not necessarily work or service time, as those terms are used in the Agreement. The Agreement, in Rule 6(d), recognizes that some time, such as attending court, deadheading, travel time, etc., might be compensated by special allowances. We read Rules 6 and 7 to apply only when the employee is actually performing work or service. There is ample arbitral precedent holding such time is not work or service, as contemplated by the Agreement. See Second Division Awards 1162 and 3086. We concur with those decisions, and find the time spent in this case was, therefore, not subject to the overtime Rules.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1992.