CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4321
Referee Edward L. Suntrup Docket Number 4287

PARTIES TO DISPUTE: Railroad Yardmasters of America
Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Claim of Yardmaster T. Skarupinski for an additional for (4) hours pay at the appropriate yardmaster's rate for June 1, 1980; account worked 11:00 p.m. to 7:00 a.m. at "SK" Yard on that date, his sixth in that work week. He was only paid straight eight (8) hour day for that tour.

OPINION OF BOARD: The instant case centers on a claim filed by the Organization on behalf of Yardmaster T. Skarupinski on June 4, 1980. The claim is for overtime rate for the 11 PM-7 AM shift that the Claimant worked at the Carrier's "SK" Yard on June 4, 1980. The Claimant was paid the straight time rate for having worked that shift. The claim was filed on the basis of Agreement Rule 4-B-1(b) which reads, in pertinent part:

> "(a)n extra yardmaster required to perform service in excess of five (5) days in his work week will be paid one and a half times the straight-time rate for work on either or both the sixth or seventh day..."

and on the basis of Rule 4-A-1(a) which reads, in pertinent part:

> "(e)ight (8) consecutive hours service, exclusive of the time required to make transfers, shall constitute a day...".

The claim was denied on property on the basis of Agreement Rule 4-B-1(b) which states, in pertinent part:

> "(r)elief, extra and unassigned yardmasters will be compensated on a daily basis for each day so assigned at the rate of the position filled..."

The position of the Organization is that the Carrier herein has "attempted to circumvent (the) rules and interpret a day as constituting twenty-four (24) hours versus eight (8) as called for in (the) scheduled agreement". The week in question which the Claimant worked was the following:

DATE	TOUR OF DUTY	COMPENSATION ALLOWED
Wednesday, May 28, 1980	3:00 P.M. - 11:00 P.M. East End Tower-Bison Yard	eight (8) hours pro rata
Thursday, May 29, 1980	3:00 P.M. - 11:00 P.M. "SK" Yard	eight (8) hours pro rata
Friday, May 30, 1980	3:00 P.M. - 11:00 P.M. "SK" Yard	eight (8) hours pro rata
Saturday, May 31, 1980	8:00 A.M. - 4:00 P.M. Abbott Road Yard 11:00 P.M. - 7:00 A.M. "SK" Yard	eight (8) hours punitive eight (8) hours pro rata
Sunday, June 1, 1980	11:00 P.M. - 7:00 A.M. "SK" Yard	eight (8) hours pro rata
Monday, June 2, 1980	not called	
Tuesday, June 3, 1980	not called	

These facts are not in dispute. What is in dispute is whether the shift which the Claimant worked on Sunday, June 1, 1981 was the Claimant's sixth day of work, as the Organization contends, or whether it was only his fifth day of work, as the Carrier contends. This, in turn, depends on the interpretation one gives to the 11 PM to 7 AM tour of duty which the Claimant worked on May 31, 1980. Was this tour of duty which the Claimant worked on that day his second "day" of work as the Organization contends, or was it not as is the position of the Carrier?

The Board has closely studied the record on property. The Board has also studied where the applicable Agreement has used the term "day" as well as past Awards of the National Railroad Adjustment Board which have dealt with some aspect of the basic day rule. Both are part of the public record.

The central issue here is whether or not the intent of the parties, when framing the language of Rule 4-A-1(a), was such that the term "day" was to mean tour of duty or not.

A close reading of the Agreement shows that the term "day" is used therein in a variety of contexts. It is used to establish seniority days (Rule 2-B-1(a)(b) sqq.); it is used to designate relief days (Rule 2-E-1(a)(11); 3-B-2(5)); to establish bumping rights (Rule 2-E-1(b)); to bulletin new and vacant positions (Rule 3-B-1(a)); to permit return from absence (Rule 3-C-1) and so on. In all of these instances the intent of the parties is clear. A day is 24 hours. The contract often, but not always, specifies a day by the qualifier, "calendar" day. The position of the Carrier is that the meaning of the term "day" is consistently carried throughout the Agreement and that its meaning is always 24 hours. It is also unquestionably true that the parties use the phrase "tour of duty" at points in the Agreement to refer to an 8 hour work day. Such is the case in Rule 4-A-2(2) where an 8 hour work day is called a "tour of duty" and as such becomes both the language and basis for calculating the punitive rate which this Claimant, for example, received on May 31, 1980 since he "...perform(ed) two tours of duty as yardmaster within a twenty-four hour period". In Rule 4-A-1(a) and subsequent sub-sections of this Rule, however, the parties do not use the phrase, "tour of duty", but rather the term "day" when operationalizing the "basis of pay". Does "day" here mean the same as "tour of duty" or does it have a different meaning in this Rule than in various other Rules in the Agreement? Both parties to the instant dispute are well aware that "...(t)he Board has no authority to read into a contract that which its makers have not put there expressly, or by clear implication" (emphasis added) (Fourth Division Award 217; also Fourth Division Awards 105, 242, 989, 1288 and 1289). The parties to this Agreement negotiated a definitional section wherein it is stated: "(e)xcept as otherwise specified, all reference to number of days means calendar days" (emphasis added). Herein is clear indication that the parties left open the option of referring to days in some other manner than "calendar days". Rule 4-A-1(a) states: "...(t)he assignment of regular yardmasters shall be five (5) days per week". If the interpretation proposed by the Carrier is taken literally this provision would mean that the yardmasters in question would be assigned 5 times 24 hours per week. This would lead to an illogical conclusion. When the Board is confronted with alternatives whereby an interpretation can lead to a logical or an illogical result "consistent procedure and construction dictate the adoption of the former" (Fourth Division Award 1260; see also Fourth Division Awards 1224, 1640, 3218). Clearly, the phrase "five (5) days per week" in Rule 4-A-1(a) draws its significance from the first sentence of this Rule which is: "(e)ight consecutive hours service...shall constitute a day...". Further, Rule 4-A-1(c) provides the formula for calculating hourly rate of pay which is basis for determining overtime rate. This provision states:

"A yardmaster shall be paid a daily rate of pay for service rendered which shall be calculated as follows:

The daily rate shall be determined by multiplying the monthly rate (in Appendix 'A') by 12 and dividing by 261.

The straight time hourly rate shall be determined by dividing the daily rate by 8.

The overtime hourly rate shall be one and one-half times the straight time hourly rate." (emphasis added)

Here the Agreement clearly specifies that the "hourly rate shall be determined by dividing the daily rate by 8" and not by 24 (emphasis added). If "daily" here meant what the Carrier claims it does, the illogical result would be an hourly rate which would be three times lower (with consistent results for overtime) than the formula provides. Thus the term "day" or "daily" as used in Rule 4-A-1(a) through (d) is consistent and those terms must be operationalized as 8 hours and not 24 hours in order to calculate hourly pro rata and overtime rates of pay. The term "day" here is an "otherwise specified" exception (than calendar days) of the use of that term in the Agreement.

The Board has studied prior Awards dealing with variations of the question of the correct operationalization of the term "day" in railroad agreements. Fourth Division Awards 737, 924, 1010, 1011 and 1060 all deal with the same Organization which is party to the instant case, and various Carriers. All of these Awards interpret a rest day as 24 hours which is not inconsistent with the manner in which the Board would interpret a rest day in the instant Agreement. Such Awards are not, therefore, on point with the instant dispute. Fourth Division Awards 1245 and 2697 are also not four square with the instant case since they do not deal with an interpretation of language such as is found in current Agreement Rule 4-A-1(a). In addition to these the Board has studied Fourth Division Awards 1173, 1364, 2623 and 1640. Award 1173 deals also with the definition of a rest day in an Agreement between the instant Organization and the Terminal Railroad Association of St. Louis which was operative in the late 1950's. Rule 6(c) of that Agreement has language similar to that of Rule 4-B-1(c) of the Agreement at bar. That Award concluded that a rest day under Rule 6(c) means 24 hours. Such is true herein also for a rest day but is irrelevant to the issue here at stake. Award 1173 also quotes an Interpretation by the National Mediation Board issued January 31, 1947 on the proper interpretation of the meaning of the words "on a day" in a 1942 Agreement between the American Train Dispatchers Association and several Carriers. That Interpretation, involving the length of a work day, stated in part: "...(i)n the absence of any concrete evidence that there was an understanding...to the effect that the words 'on any day' mean 'tour of duty', the Board finds (that) the phrase 'on any day'...has the meaning (of) 24 hours..." (emphasis added). The concrete (substantial)

evidence in the instant case to the contrary is the indisputably clear language used by the parties when framing Rule 4-A-1(a) through (d), and the implications that has for calculating compensation as noted above. Thus neither Award 1173 nor the National Mediation Board Interpetation of 1947 is four square with the instant case. Further, the Labor Members Dissent to Award 1173 explicitly states that a "work day" is not defined in the Agreement between this Organization and the Terminal Railroad Association of St. Louis. No such contention by the Organization is herein made with respect to the Agreement here at bar. Awards 1364 and 2623 are also not on point with the instant case. The former is a claim by this Organization that the Rule which provides that 8 consecutive hours, or less, shall constitute a day means that a Claimant should be paid 8 hours overtime even if he works less than that amount. The latter deals with the proper payment of overtime when work in excess of the normal eight hour shift is interrupted. Award 1640 also lends no credence to either side in the instant dispute because there is no evidence in that Award that the Board was there confronted with a Rule similar to instant Agreement Rule 4-A-1. In that case the Board took the liberty of resorting to common understandings and interpreted a day to mean 24 hours. That this is the proper interpretation of that word in the instant Agreement at various places is also true as noted above. But the language of the Agreement simply does not support such interpretation for Agreement Rule 4-A-1 and the claim, on merits, must be sustained in full.

Any and all other materials and arguments relative to this case which have been introduced in the submissions, or in oral argument before the Board which were not exchanged on property are untimely and inadmissable (Third Division Awards 20841, 21463, 22054; Fourth Division Awards 4112, 4136, 4137).

FINDINGS:

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

The Carrier and the 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August, 1985