

**IN THE MATTER OF ARBITRATION BETWEEN:**

National Railroad Passenger Corp. (Amtrak)	:	
	:	
The Employer	:	Opinion
	:	
- and -	:	and
	:	
Amtrak Police Labor Committee (FOP Local 189)	:	Award
	:	
The Union	:	

Grievance: (Officer Anoil, et.al.) Case No. 2021-CEN-011

Before

Margaret R. Brogan, Esquire  
Arbitrator

Appearances

For the Employer

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For the Union

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This matter presents the issue of whether the Employer violated the collective bargaining agreement in the manner it paid officers who were required to spend a night away from their home base due to long distance train ride assignments.

A hearing was held by video on March 2, 2021. The parties were afforded the opportunity to introduce all relevant evidence and argument. A stenographic record was taken of the proceedings. The parties filed written briefs by May 21, 2021, at which time the briefs were cross-served, and the matter was deemed submitted for determination.

At hearing, the parties stipulated to the following issue:

**ISSUE**

Whether the Employer violated the collective bargaining agreement in the manner it paid officers for time away on the following dates – August 15, 16, 27, 28, and September 2 and 3, 2020 pursuant to Rule 7(j) and 7(a)4, and if so, what shall be the remedy? (T. 11-12)

## FACTS

This arbitration is premised upon a grievance filed by the Union on behalf of four officers and two sergeants protesting the manner in which they were paid for their work related to long distance train rides they were assigned as part of a crime analysis program. The assignments precluded the grievants from returning to their home base during their eight-hour tour of duty.

Amtrak paid the grievant officers sixteen hours of pay at the standard straight-time rate for those days they were unable to return to their home base due to their assignment. In line with Rules 7(j) and 7(a)4, eight hours were paid for their regular tour of duty, and eight additional hours were paid for their “away from home” time.<sup>1</sup> It is undisputed that the officers worked more than forty hours in the relevant workweeks.

Senior Manager, Labor Relations Eric Dartt determined that the time paid to the grievants under Rule 7(j) for being held away from their home location due to their assignment should be paid at the straight time rate, and that time paid under Rule 7(j) should not be counted toward the accumulation of 40 hours for overtime purposes. (JX 3)

In its grievance, the Union protests the grievants’ pay for the dates in issue, contending that Amtrak has violated Rules 7(a)1, 7(a)4, and 7(j).

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<sup>1</sup> These hours are also referred to as “time away” or “time held away” from their home base or location.

## **RELEVANT CONTRACTUAL PROVISIONS**

### **Rule 7 – Overtime**

A. 1. Except as otherwise provided, all authorized time worked in excess of forty (40) hours per week, exclusive of roll call time which is always unpaid, shall be considered overtime and paid for on the actual minute basis at time and one-half rate, or the employee, at his option, may elect to accept compensatory time off on the basis of one hour's overtime equaling one and one-half hour's time off. For the purposes of applying this rule, roll call time is a part of every shift and increases the workday by (15 minutes) without additional compensation and does not count toward overtime eligibility.

2. The following shall be considered as time worked for computing forty (40) hours worked, vacation, holiday, paid personal leave days, jury duty, military leave pay, paid bereavement leave, court time and paid training, court time and time exchanged in accordance with Rule 12 – EXCHANGING ASSIGNMENT.

4. A police officer will be limited to 16 hours of duty, exclusive of unpaid roll call time, including their regular tour of duty, in any 24 hour period except when the exigencies of police service requires otherwise. A police officer who has not been off four (4) hours prior to the start of his next regular tour of duty will not be permitted to work same.

J. Employees performing service which does not permit them to leave and return to their home terminal (reporting station) during or within their eight (8) hour tour of duty will be provided meals and lodging and paid in accordance with the limit set forth in Paragraph A(4) of this Rule.

## **DISCUSSION**

The positions of the parties shall be briefly summarized. The Union contends that Amtrak has violated Rules 7(j) and 7(a)4 of the parties' CBA when it failed to properly pay officers who were required to spend a night away from their home base due to long-distance train ride assignments. The Union maintains that the officers received pay at the standard straight time rate, even

though Rules 7(j) and 7(a)4 dictate that they should have been paid at the overtime rate of time-and-a-half. The Union opines that the evidence adduced at the hearing proved that Amtrak has a long-standing practice of including “away from home” hours as counting towards the accumulation of overtime, providing the grievants with every reasonable expectation that they would be renumerated at the overtime rate for those hours, given the officers worked over 40 hours for the workweeks in issue. The Union argues that the language of Rule 7(j) in conjunction with paragraph 7(a)4 supports its interpretation. The Union argues that the testimony of Tim Eckard, long-time Amtrak employee and Senior Manager, supports the Union’s interpretation, along with advice communications authored by Mr. Eckard. The Union urges that the grievance should be upheld, and seeks an appropriate remedy.

To the contrary, Amtrak contends that it has correctly paid officers for time when they were not working but were held away from their home location on assignment. According to Amtrak, the Union, who bears the burden of proof, did not establish that the contract language supports its interpretation, nor did it prove a consistent past practice to support its theory. The Employer argues that, in line with explicit and unambiguous contract language, the time away should not count towards overtime eligibility, nor should such time be paid at the overtime rate. The Employer maintains that the Union’s interpretation leads to absurd results where an officer, not working, is paid as much or potentially more than an officer working overtime. Amtrak points to Rule 7(a)2 which explicitly

mentions time paid that counts toward the 40 hour threshold for overtime eligibility, and fails to include this held-away pay under 7(j). Amtrak also cites arbitral authority in support of its interpretation of the contract language. Amtrak urges that the grievance be denied.

On the basis of the contract language, and the evidence and argument presented, I conclude that the Union demonstrated a violation of the collective bargaining agreement.

The question posed involves the CBA obligations and rights related to the pay of officers who are assigned work which requires them to spend time away from their home base. First, the CBA expressly discusses this situation in Rule 7(j):

*Employees performing service which does not permit them to leave and return to their home terminal (reporting station) during or within their eight (8) hour tour of duty will be provided meals and lodging and paid in accordance with the limit set forth in Paragraph A(4) of this Rule.*

Rule 7(a)4, referred in Rule 7(j) above, states as follows:

*A police officer will be limited to 16 hours of duty, exclusive of unpaid roll call time, including their regular tour of duty, in any 24 hour period except when the exigencies of police service requires otherwise. A police officer who has not been off four (4) hours prior to the start of his next regular tour of duty will not be permitted to work same.*

It is undisputed that Amtrak paid the grievant officers 16 hours of pay at the standard straight-time rate for those days they were unable to return to their

home base due to their assignment. Eight hours was paid for their regular duty day, and eight additional hours for the “away from home” time. Therefore, in line with the contract language, Amtrak recognized that all of that time is considered “duty” hours under Rule 7(a)4. This is reasonable given that an officer cannot return to their home base due to their being on their required assignment. Such a restriction and potential hardship deserves to be properly compensated.

Amtrak takes the position that the officer is to be paid at straight time for these away from home duty hours. Further, Amtrak contends that these hours do not count toward the accumulation of hours in determining overtime eligibility. These positions cannot be squared with the explicit contract language. If the contract language clearly construes these “away from home” hours as part of an officer’s 16-hour tour of duty per day, then how can those hours *not* be considered “authorized time worked” under Rule 7(a)1? I conclude that the contract clearly categorizes “away from home” hours as authorized time worked under Rule 7(a)1.

Rule 7(a)1 explains how such authorized time work is to be paid, and that it is to be counted towards 40-hour overtime eligibility:

*Except as otherwise provided, all authorized time worked in excess of forty (40) hours per week, exclusive of roll call time which is always unpaid, shall be considered overtime and paid for on the actual minute basis at time and one-half rate...*

In analyzing Amtrak's contrary position, the language of Rule 7(a)1 leads to the further query: where in the contract is it "otherwise provided" (the limitation set forth in 7(a)1) that compensated "away from home" hours, which in line with the above analysis is "authorized time worked," should *not* be counted towards the 40 hour overtime eligibility threshold? The Employer has pointed to no such carve-out for this clearly authorized time worked.

Instead, the Employer contends that the contract fails to explicitly state that "away from home" duty should be considered as time worked for computing the 40 hours per week for overtime eligibility, citing Rule 7(a)2:

*The following shall be considered as time worked for computing forty (40) hours worked, vacation, holiday, paid personal leave days, jury duty, military leave pay, paid bereavement leave, court time and paid training, court time and time exchanged in accordance with Rule 12 – EXCHANGING ASSIGNMENT.*

A review of Rule 7(a)2 makes quite clear that it is inapposite to the question before us, as it involves situations where an officer is not performing a tour of duty, with the exception of holiday pay, which can be paid when the officer is on vacation. The fact that "away from home" hours paid are not listed is irrelevant. Rules 7(j) and 7(a)4, when read together, make clear that such hours, up to the 16-hour limit on an officer's tour of duty, are authorized time worked. There is no need for such duty time to be listed in a paragraph enumerating situations that for the most part do not involve a duty assignment. As stated above, to support the Employer's interpretation, there needs to be explicit



language carving out the pay in issue from “authorized time worked” under Rule 7(a)4. There is no such carve-out.

Arbitrator Scott Buchheit’s award gives helpful guidance in this case. *FOP Lodge 189 Labor Committee and National Railroad Passenger Corporation Amtrak (2013)*. Arbitrator Buchheit’s award analyzed the issue of whether vacation and holiday time, standing alone, should be considered authorized time worked for purposes of being paid at the overtime rate. He answered no, ruling that 7(a)2 explicitly counts that time as time worked for computing 40 hours worked for the overtime threshold, but that more than 40 hours of vacation pay and or holiday pay would not lead to the entitlement of overtime pay absent some other “authorized time worked” under Rule 7(a)1. In other words, vacation and/or holiday time counts toward overtime eligibility, but standing alone, without authorized time worked in the pay period, such time over 40 hours is not paid at the overtime rate. Arbitrator Buchheit also made clear that it is irrelevant when the authorized time worked occurs within a pay period, leading to the entitlement of overtime.

In the instant case, there is authorized time worked that the Employer refuses to counts toward the 40 hour threshold, and refuses to pay at overtime when the employee exceeds 40 hours in that week. I find that stance at odds with the plain language of the collective bargaining agreement.

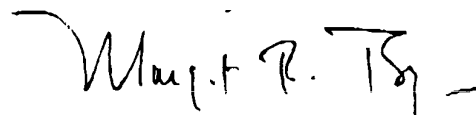
I have made my determination based solely upon the contract language, demonstrating the parties' shared intent. However, if I did consider the past practice evidence, the testimony of former Amtrak Senior Manager Ted Eckard, a senior management official who was charged with providing pay guidances consistent with the CBA, was in line with this interpretation and is worthy of weight.

In sum, I find that all "away from home" hours, pursuant to Rules 7(j) and 7(a)4, count towards the 40 hour threshold in determining overtime eligibility. When that 40 hour threshold is met, and some of that authorized time worked includes "away from home" hours, then the officer is to be compensated at the overtime rate for all hours over 40 hours.

In this case, it is undisputed that the grievant officers reached the 40 hour threshold, and they should be paid for all hours, including "away from home" hours, over the 40 hour threshold at time and a half. I will award the remedy requested by the Union.

**AWARD**

The grievance is upheld. The Union bore its burden of proof in establishing that Amtrak violated the collective bargaining agreement in the manner it paid the grievants for their time away from home base on the following dates: August 15, 16, 27, 28 and September 2 and 3, 2020. Amtrak violated the collective bargaining agreement by failing to count “away from home” hours paid on those dates toward the officers’ accumulation of time worked for purposes of determining overtime eligibility, and by failing to pay the officers at the overtime rate for all hours in excess of 40 in a week when they were paid “away from home” hours. By way of remedy, it is ordered that Amtrak provide grievants half-time pay based on their rate of pay in effect for all hours worked in excess of 40 hours in the work weeks related to their above assignments that was not previously paid, including the away from home hours. It is further ordered that Amtrak cease and desist from engaging in any practice or policy inconsistent with the above interpretation.



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Margaret R. Brogan, Arbitrator

Date: June 18, 2021