



Award No. 4917

Docket No. 4863

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Carman H. O. Nippert was unjustly dealt with and his service rights were violated when he was not given the privilege of working overtime in compliance with Rule 11.

2. That accordingly the Carrier be ordered to compensate Carman H. O. Nippert, 8 hours each day, for the following days at the fab-machine operator's applicable straight time rate; November 30, 1963; December 1, 1963; December 14, 1963; January 4 and 5, 1964; and January 12, 1964.

EMPLOYEES' STATEMENT OF FACTS: Carman H. O. Nippert, hereinafter referred to as the claimant, is employed as a carman in the Raceland Car Shops by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its Raceland Car Shops on the first shift as a carman fab-machine operator, with a work week Monday through Friday, rest days Saturday and Sunday. The Raceland car shops is a car building shop, and operates on a predetermined quota basis. In the late part of '63 and the early part of '64, the carrier's shop superintendent, W. O. Bradley ignored the carman's overtime board which was locally agreed upon, and refused to call the employes from said overtime board. Also the carrier's shop superintendent, W. O. Bradley ignored Rule 11 and refused to make any effort to equalize the overtime, which is not only confirmed by the record, but by the statement made by Br. Bradley at a conference. As a result of this action, M. L. Pennington, fab-machine operator worked a total of 104 hours, while the claimant, also a fab-machine operator worked a total of 48 hours. An overtime statement of 5 employes during the period 11-16-63 and 3-15-64 reflects no attempt on the part of the carrier to comply with Rule 11 insofar as the claimant is concerned. Claimant could and did operate the machine on which overtime was worked causing the violation of Rule 11.

(2) Without prejudice to the Carrier's position stated in (1) above, the claim should be denied on its merits because:

(a) Under Rule 11(b), the incumbent must be given first preference to work on an unassigned day in the absence of an available unassigned employee.

(b) The Carrier distributes overtime as equally as possible by calling those low in overtime hours for work not subject to Rule 11(b).

(c) Allowance of the claim would tend to cause an unequal distribution of overtime.

(d) The claim erroneously attempts to apply a first-in first-out or rotary basis.

(e) Awards of the Board support Carrier's position.

(f) The General Chairman has agreed in writing that work on unassigned days accrues to the incumbent under Rule 11(b).

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claim is that Claimant's rights were violated when he was not given overtime work in compliance with Rule 11, and specifically with Understanding (4) thereof, which reads as follows:

"There will be, as near as possible, an equal distribution of overtime between employees who voluntarily sign the overtime call lists."

It should be noted that this is not a part of the rule itself, but an understanding which is to govern the application of the rule; and further, that it provides a distribution of overtime, not absolutely equal by week, month, year or other period, but "as near as possible" consistent with the rule itself, which it does not amend nor overrule.

Paragraph (b) of Rule 11 provides as follows:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The specific complaint is that during the period from November 16, 1963, to March 15, 1964, M. L. Pennington, described by the Employees as a Fab-Machine Operator, (more particularly identified by the Carrier without dis-

pute as the operator of a "New Cincinnati Bend Brake Machine" in the Fabricating Shop), worked 56 hours more overtime on Saturdays and Sundays than Claimant, also described by the Employes as a Fab-Machine Operator, (more particularly identified by the Carrier without dispute as the operator of an "Oxweld Burning Machine," also called a "Shape Cutting Machine," in that Shop).

These are 5-day positions, and when it is necessary to work the respective machines on Saturday or Sunday, Rule 11 (b) applies, under which the Carrier is specifically required to use, either "an available unassigned employe who will otherwise not have 40 hours of work that week," or "the regular employe," which must mean the regular week-day holder of that position. There is no provision in the rule for the use of the regular week-day holder of a different position; consequently the use of Claimant instead of Pennington on the latter's machine on Saturdays and Sundays would have been a violation of the Rule. Clearly, by using Pennington there it did not violate Rule 11.

It should be noted that Rule 11 (b) relates only to work on days that are "not part of any regular assignment," and not to other overtime. Being a special provision, it must necessarily prevail over Understanding (4), which even if a part of Rule 11 itself, is a general provision.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.