

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13187
Docket No. 13042
97-2-95-2-68

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Co.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. Carrier violated Rule 8 of the Maine Central Agreement, as supplemented by the October 23, 1992 Letter of Agreement, on November 29, 1993, when it assigned overtime to Carman R. Bourgoin rather than properly notifying the local committeeman to secure the appropriate Carman for this overtime.**
- 2. Carrier shall now compensate Carman Charles Philbrick for eight (8) hours pay at the overtime rate of \$19.80 plus one (1) hour of double time at the rate of \$26.40.”**

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 were given due notice of hearing thereon.

This claim arises from a derailment of four cars which occurred on November 29, 1993 at Rumford, Maine, and Carrier's assignment of overtime involved in rerailing those cars to the regular road truck crew sent to that location rather than involving the local committee at Waterville, Maine, in the assignment of that overtime. The regularly assigned road truck crew worked for 17 hours at Rumford on that date to complete the rerailing task. The record reflects that no Carmen are employed at Rumford, and that an overtime roster is maintained in Waterville, some two hours from that location.

The Organization contends that this overtime assignment violates the following provision of the Maine Central Agreement:

"Rule 8 - Equalizing the Time

(b) When it becomes necessary for employees to work overtime, the Local Official will advise the Local Committee as to the number of employees required. The Local Committee will then designate the employees to perform the work."

The Organization also relies upon the following language in the October 23, 1992 Letter of Agreement entered into by the parties regarding the Distribution of Overtime:

"... At each location where Carmen are employed, an overtime list of employees will be prepared by the supervisor and the designated local committee man. When overtime is required, the supervisor will contact the local committee man and indicate to him the number of employees needed for overtime.

Based upon the overtime list of employees, the local committee man will call the appropriate employees until the number needed by the Carrier has been secured. The local committee man will notify the supervisor as to the employees who were secured for overtime as well as those who were called but not secured...."

The Organization argues that Carmen Philbrick who was working on that date in the Waterville Shop would have been the appropriate person to be sent to work that overtime, and should be compensated accordingly.

Carrier initially contends that these provisions apply to planned, foreseeable overtime, which was not the situation with this derailment. Carrier argues that it properly dispatched the road crew to perform the rerailing of the cars, and that they were entitled to perform any overtime involved under the continuation of work provisions of Rule 4. It contends that the Rules do not require it to send the road crew back two hours to Waterville after their regular shift and dispatch a different employee to travel another two hours to perform any overtime involved in the same job. It alleges that the overtime involved could not have been known or anticipated ahead of time.

Carrier further argues that the October 23, 1992 letter, by its very terms, does not apply since this overtime work was at a location specifically excluded from its coverage, since no Carmen worked there. Carrier also notes that by letter dated February 1, 1993 the parties agreed to further understandings concerning the assignment of overtime, including that road truck crews would be manned only by employees who bid or bumped into that position. Carrier argues that Claimant is not such an employee, and that the Organization failed to meet its burden of proving a violation of the Agreement.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving that Carrier's assignment of overtime to the regular road crew properly dispatched in this derailment situation was in violation of the cited Rule. In the circumstances of this case, Carrier was entitled to have its assigned crew complete the task "to meet its service requirements" under Rule 4. The Organization has failed to show that the language of the October 23, 1992 Letter of Agreement was applicable to this location or that Claimant was qualified to perform the work in issue. Accordingly, the claim must fail.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of December 1997.