Award No. 3718
Docket No. 3357
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L.—C. I. O.

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

On January 7, 1958, Mr. Morris, Car Inspector Leader, reported off duty. The Carrier then took one of the other car inspectors who was on duty and promoted him to a Leader. This is in violation of the Overtime Agreement as signed for Youngstown, Ohio December 2, 1957.

Since there were no extra men available then paragraph five (5) of the Overtime Agreement should have been used.

Since this was not done the Organization requests that the Carrier compensate A. Rotunno, Car Inspector, eight (8) hours punitive time for January 7, 1958.

POSITION OF EMPLOYES: That Car Inspector A. Rotunno was available for the work performed by the promoted employe and should have been called by the carrier to perform this work when Car Inspector Leader Morris reported off duty and no extra employes were available for this work.

That when extra employes are not available then the carrier should use the overtime agreement as it was negotiated for that purpose.

Paragraph 5 of the overtime agreement reads as follows:

"5. Where overtime is required in any particular class and there are no extra men or no men on the overtime list for that class available to work, the senior employe in the entire Youngstown seniority district who is off duty on his relief or rest day, will be

the work it could have been done at that rate by virtue of the facts that the claimed dates were his rest days. While there is some differences in the awards of this Division, upon this point, the better reasoning would seem to support those decisions allowing simply the pro-rata rate. The overtime rule has no application to time not worked. See Awards 1771, 1772, 1782, 1799, and 1825, Second Division. * * *"

When similar issue was before the Third Division, the Board said in Award 3193:

"* * * In the absence of Agreement to the contrary, the general rule is that the right to work is not the equivalent of work performed so far as the overtime rule is concerned. The overtime rule itself is consonant with this theory when it provided that 'time in excess of (8) hours exclusive of meal period on any day will be considered overtime'. The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently time not actually worked cannot be treated at overtime rate unless the Agreement specifically provides. This conclusion is supported by this Division Awards 2346, 2695, 3049. * * *"

This same conclusion is supported by the following Third Division Awards: 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073, and 4196.

CONCLUSION

The carrier has shown that the carmen's agreement did not obligate the carrier to fill the vacancy in question in this dispute at the overtime rate of pay. Further, that since the question of overtime was not involved in filling this vacancy, the overtime agreement of December 2, 1957 had no application in this particular case since it specifically provides how overtime will be equally distrubuted "where overtime is required" and henceforth does not come into play in a situation not demanding the payment of overtime.

Awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier respectfully submits that the claim involved herein is completely devoid of merit and earnestly requests that it be denied.

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 employe 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.

When a lead car inspector had reported off duty and no extra men were available, a regularly assigned inspector on the same trick was assigned to the lead car inspector's position for the day. The employes contend that the

vacancy on the lead car inspector's position should have been filled pursuant to Paragraph 5 of the Overtime Agreement of December 2, 1957, reading:

> "Where overtime is required in any particular class and there are no extra men or no men on overtime list for that class available to work, the senior employe in the entire Youngstown seniority district who is off duty on his relief or rest day, will be called."

The rule relied upon has to do with the equal distribution of overtime and the paragraph quoted applies only "Where overtime is required". If we assume that this rule is broad enough not only to cover overtime in its usual sense but also other work requiring payment of overtime rate, still it would not apply here unless the manner of filling the lead vacancy was objectionable under some other rule of the agreement since thereby carrier avoided payment of overtime rate.

Except as provided in said overtime agreement it does not appear that the occupant of a lead car inspector position is of a different class from that of a car inspector or that a car inspector from the extra board could not have been used as lead inspector, had one been available, and we find no rule that was violated in the filling of the vacancy.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1961.