

**Award No. 5304**

**Docket No. 5082**

**2-LV-CM-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**LEHIGH VALLEY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

That within the meaning of the current agreement, particularly Rule 12, Carman Sante Sorrentino was unjustly dealt with when he was not called to work vacancy on overtime basis on Sunday, August 30, 1964.

That Carman Sante Sorrentino be compensated eight (8) hours at the punitive rate of pay for August 30, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** Carman Sante Sorrentino referred to as the claimant, is regularly assigned to position of carman at East Buffalo, N. Y. by the Lehigh Valley Railroad Company, hereinafter referred to as the Carrier. Sunday, August 30, 1964 was one of his regularly assigned rest days. He was signed up on the Overtime Board and available to be called for work on this date.

On August 30, 1964, Carman John Maas reported off duty from his regular assignment and it was necessary to fill his position. The Carrier called Carman A. Kuczynski to cover this vacancy and he was compensated eight (8) hours at the punitive rate of pay.

According to statement made by General Car Foreman Joseph Calveric in his letter of September 23, 1964 to Local Chairman R. I. Miller, from January 1, 1964 forward Claimant had accumulated eighty-seven (87) hours of overtime and Carman A. Kuczynski had accumulated one hundred forty-eight and three quarters (148¾) hours of overtime. According to employees' records they had accumulated 80 hours and 160 hours respectively.

This dispute has been handled with all officers of Carrier designated to handle such claims, including Carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

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 a 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 or 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 also supported by the following Third Division Awards: 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073, and 4196.

The carrier has conclusively shown that the overtime work on date of this claim was assigned in accordance with the rules of the agreement and in accordance with the established and accepted practice at East Buffalo governing the distribution of regular overtime.

The claim herein made is without merit and the carrier respectfully requests that it be denied.

Oral hearing is not desired by the Carrier, however, should oral hearing be requested by the employees, then carrier also requests to be present.

(Exhibits not reproduced.)

**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.

It is Petitioner's position that Carrier violated Rule 12 of the applicable agreement by calling Carman Kuczynski rather than Claimant for overtime.

Rule 12 reads as follows:

"When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the

time. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

Rule 12 is perfectly clear and provides for no exceptions or different types of overtime. Under its terms, Carrier should make a proper effort to equalize overtime not on a day-to-day basis but over reasonable and practicable periods of time.

It is not material that Claimant may have been called for more overtime than were some of the other carmen. The fact is that he had considerably less overtime than had Kuczynski over an eight-month period and as between the latter and him, he should have been called for the overtime in controversy.

There well may be circumstances that would explain reasonable variations but here the difference in overtime is excessive and Petitioner's complaint is justified.

Since the very essence of this claim relates to overtime, we will sustain the claim as presented.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.