

Award No. 5427

Docket No. 5285

2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the carrier violated the current Agreement at Burnside Shop, Chicago, Illinois, January 9, 1965, when Electricians D. T. Cruse, H. D. Curtiss and H. C. Romans were denied the right to work overtime.

2. That the Carrier be ordered to compensate Electricians D. T. Cruse, H. D. Curtiss and H. C. Romans eight (8) hours each at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Electrician D. T. Cruse, with a seniority date of July 23, 1926; Electrician H. D. Curtiss, with a seniority date of April 4, 1930; and Electrician H. C. Romans, with a seniority date of August 30, 1962; hereinafter referred to as the Claimants, are employed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier, as Electricians at the Burnside Shop in Chicago, Illinois and are listed as armature winders on the Electricians' seniority roster.

J. Bausys, Electrician Helper, has a seniority date as a temporary set-up helper of September 14, 1960; L. F. Luker, Jr. had an electrician seniority date of December 15, 1964;; K. A. Baro, Electrician Apprentice, had a date as a temporary set-up Electrician of October 23, 1961; J. F. Dowling, Electrician, had a seniority date of September 4, 1962; J. F. Ficek, Electrician, had a seniority date of November 13, 1953; J. Poerkert, Electrician, had a seniority date of May 16, 1946; R. P. Ziegner, Electrician, had a seniority date of July 11, 1944; and E. Bracken, Electrician, had a seniority date of July 1, 1926. These are the men who worked overtime January 9, 1965, the day of the violation.

The work to be performed on the day in question was not of a temporary nature but would continue for about three (3) months.

That on January 9, 1965, Claimants were denied the right to work overtime. The Claimants are qualified under Rule #116 of the Schedule of Rules.

IV. CONCLUSION

The brotherhood alleges that the company did not distribute overtime equally to the three claimants on the claim date in violation of Rule 13.

The company has shown that the Second Division has acknowledged on several occasions that under similar rules management has a wide latitude in distributing overtime. It has been clearly demonstrated that two of the claimants, H. D. Curtiss and D. T. Cruse, worked much more overtime than the average employe and more than any employe who worked on the claim date. In addition, two of the claimants have turned down numerous opportunities to work overtime during the equalization period. Clearly, the company cannot attempt to perform the difficult task of equalizing overtime if the employes refuse to work overtime. The only duty of the company is to provide the employes with the opportunities; it is up to the employes to take advantage of these opportunities. The company should not be penalized for employes refusing opportunities to equalize overtime.

A reading of Rule 13 clearly points out that there is no reference to senior employes being given preferential treatment. In fact, Rule 13 specifically states that it is a general purpose to distribute "overtime equally." The union alleges that the company in applying Rule 13 has been guilty of discriminating against senior employes. The company maintains that it has treated all employes equally. It has shown that Rule 13 does not require it to favor senior employes.

(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 waived right of appearance at hearing thereon.

Three claimants contended that the company improperly distributed overtime on January 9, 1965 to the three claimants. That Rule 13 required that overtime worked should be distributed equally on a yearly basis.

The pertinent section of Rule 13 reads:

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

The overtime records were established on a five year basis because some years there was virtually no overtime worked. There was no evidence to include that the claimants had not received their share of overtime work. The rules further do not preclude employes in upgraded status from sharing overtime. Furthermore overtime schedules are not maintained on a seniority basis.

Thus the Board is of the opinion that under the Rules and the facts presented there has been no violation of Rule 13.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1968.