



Award No. 5814

Docket No. 5690

2-LV-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That within the meaning of the current agreement and the Memorandum of Understanding between the Lehigh Valley Railroad Company and its Employees represented by the Brotherhood Railway Carmen of America, effective October 16, 1960, governing Carmen assignments in the Manchester, Auburn, Rochester, Geneva and P & L Junction, N. Y. respective points, the Carrier unjustly dealt with Carman Alphonsus E. VanDamme when they assigned Carman Burles McCall, who is regularly assigned to carman position at Manchester, N. Y., to work on carman duties at Geneva, N. Y. on Saturday, May 27, 1967.
2. That the Carrier accordingly be ordered to compensate the claimant eight (8) hours at the time and one-half rate of pay for May 27, 1967.

EMPLOYES' STATEMENT OF FACTS: Carman Alphonsus E. VanDamme, hereinafter referred to as the claimant, is regularly assigned by bulletin to regular position on the 7:00 A.M. to 3:00 P.M. shift at Geneva, N.Y., Monday through Friday, with rest days Saturday and Sunday. He was available for duty on May 27, 1967, but was not called.

The claimant is the only carman assigned to position at Geneva, N.Y.

On Saturday, May 27, 1967, the carrier dispatched Carman Burles McCall from his regular assigned position at Manchester, N.Y. to go to Geneva, N.Y. to perform carman duties at Geneva, N.Y. on that date.

This dispute has been handled with all officers designated to handle disputes, including the highest officer, all of whom have declined to adjust same.

The Agreement effective September 1, 1949 as it has been subsequently amended and the Memorandum of Understanding effective October 16, 1960, are controlling.

claimant and was on duty and under pay at straight time on the date of claim.

3. The needed carman work was unassigned work, to which claimant held no demand right of work.

4. Employees are seeking to read into the understanding of October 16, 1960 additional rights not there present and which should not be created by a sustaining decision.

5. The memorandum of understanding of October 16, 1960 upon which the employees have placed their reliance does not sustain their position and, in fact, is not applicable in this case.

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.

On Saturday, May 27, 1967, Carrier dispatched Carman Burles McCall from Manchester to Geneva, New York, where, for eight hours, he performed Carman duties. At the time, McCall was regularly assigned at Manchester and Saturday was one of his regular work days. Petitioner affirms that Claimant Alphonsus E. VanDamme, the regularly assigned Geneva Carman (Monday-Friday), should have received the Saturday assignment rather than McCall. It relies primarily on Paragraph 4 of the parties' October 16, 1960 Memorandum of Understanding which provides, in relevant part, that:

"Only Carmen regularly assigned to positions with headquarters at Rochester, Geneva and P&L Junction and at Auburn shall participate in overtime at these respective points. If additional carmen are required at these points to work overtime, carmen with headquarters at Manchester will be used either from those on duty or by calling available men . . ."

Carrier denies any rule violation. It notes that both McCall and VanDamme hold seniority rights on the same seniority district. The work required at Geneva was "unassigned". Consequently Claimant held no demand right to it and Carrier was free to use McCall who was under pay at straight time.

Carrier's arguments are not persuasive. We concur in the Finding in Third Division Award 4969 cited in Second Division Award 4670 that "an employee has no right to perform overtime work as such except where the Agreement so provides". But the 1960 Memorandum of Agreement does specifically provide that "only Carman regularly assigned to . . . Geneva . . . shall participate in overtime at these respective points." Carrier would distinguish between overtime and "unassigned" work. Of course, any hours which might represent overtime for one man might fall within a straight-time assignment of another. Thus, Saturday was a regular work day for McCall while it was an overtime day for VanDamme. More significantly, however, Saturday work was overtime work at Geneva. The intent of the

1960 Memorandum of Understanding, clearly, was to have overtime work at this point given to the carman regularly assigned there before using a Manchester man, whether he be "on duty" or not.

It may be that, in certain circumstances, overtime opportunities are considered to arise only on assigned days and work on an unassigned day, consequently, is not deemed to fall in the overtime category. However, there is no evidence in the record here that the parties to the 1960 Memorandum had such intent in mind. Petitioner's claim will therefore be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1969.