

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That the Missouri Pacific Railroad Company violated Rule 8(b) of the Controlling Agreement of April 23, 1964 on emergency road service, April 29, 1976, when they called and used other than the man first out on the overtime board to make emergency repairs to freight car Southern 528802 at Menefee, Arkansas and freight car KCS31113 at Knoxville, Arkansas. Repairs required some sixteen (16) hours to complete.
- (2) That the Missouri Pacific Railroad Company be ordered to compensate Carman B. W. Carr in the amount of eight (8) hours at the punitive rate account of their failure to call him when he was first out on the emergency road service overtime board.

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.

The essence of this case is a claim that Claimant, Carman B. W. Carr, whose name was first out on the rotating overtime board, should have been dispatched with the emergency repair truck driver to repair certain freight cars, instead of Carman Price, who was assigned.

Both truck driver and Carman Price were on duty on their regularly assigned shifts, 3:00 p.m. to 11:00 p.m., at the time they were called for the road trip at about 5:00 p.m.

Rule 8(b) of the Agreement reads:

"Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairman will, upon request, be furnished with record."

Petitioner also cites a memorandum agreement between the Master Mechanic and the Organization's Local Chairman, dated May 7, 1964, which reads in pertinent part:

"(3) We propose to work all road work, and all overtime work off of one rotating overtime board."

The Carrier holds that no Rule, including Rule 8, requires it to call an employee on an overtime basis when another employee in the craft is on duty and the work can be performed at the straight-time rate, and that the agreement does not require the Carrier to call men from the overtime board for road work rather than using a man on duty.

The Carrier adds that all Rule 8(b) does is to obligate it to distribute overtime as equally as possible; it does not set up a rotary overtime board.

It is true, Carrier acknowledges, that the repair job ran into overtime, but this was due to the fact that the truck had mechanical trouble, so that it took the truck 14 hours to return to its home base.

As to the May 7, 1964 memorandum agreement cited by Petitioner, the Carrier asserts that it was not negotiated with Carrier's Labor Relations Department nor signed by the Organization's General Chairman and that such understandings are not binding agreements.

We find Carrier's arguments persuasive. When a road trip becomes necessary, Carrier may indeed have no advance knowledge as to the time required to make the necessary repairs. Such work may or may not require overtime work. In any event, Carman Price was on duty; he was assigned to accompany the repair truck during his regularly assigned shift and we see no reason why the Carrier should be required to call employees from the overtime board when it had available an employee on duty at the time of the dispatch. To honor Petitioner's claim would be to require the Carrier to pay at the overtime rate for many hours when Carrier does not anticipate that the job will require overtime work nor whether, in fact, overtime hours will materialize. In brief, we do not believe that we can require the Carrier to pay overtime when it can utilize a qualified available employee, on straight-time duty, to do the job.

We find support in our position in a prior Award by this Division between these same two parties, Award No. 6613 (Lieberman), in which, although the Board sustains the claim on other grounds, it agreed with Carrier's argument that "the provisions of Rule 8(b) do not require a first-in first-out award of overtime in any given instance".

In light of the above, we will deny the claim.

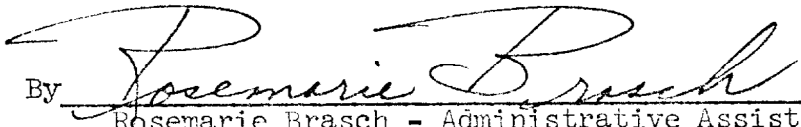
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of April, 1979.