

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 109, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That at the Reading Facilities, Reading, Pa., on March 18 and 25, 1977, the Consolidated Rail Corp. violated the controlling agreement when General Supervisor C. M. Ferguson assigned Electrician C. Stubblebine of the Reading Locomotive and Car Shop to work in the Powerhouse (on March 18) in the absence of C. Blume, Relief Electrical Stationary Engineman, instead of calling W. Burkart, Electrical Stationary Engineman, who was available to work to assist C. Blume instead of calling Electrical Engineman W. Burkart who was available to work that day.
2. That W. Burkart be compensated for eight hours pay for March 18 and eight hours pay for March 25 at the overtime rate by reason of C. Stubblebine's assignment to perform Electrical Stationary Enginemen's work was in violation of rules, Articles 1A and 2D of the March 11, 1976 agreement between Consolidated Rail Corp. and IBEW, and Rule 31, agreement between Reading Co. and System Federation 109 on January 16, 1940, Corrected February 1, 1951.

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 claim arose when the carrier assigned an electrician from the locomotive and car shop, on March 18, 1977, to fill in for a missing powerhouse electrician. The claimant is the most senior powerhouse electrician who contends that he should have been called out to work from his rest day in order to receive overtime pay.

From June 1976, the electrician who was assigned had been in the relief job category at the powerhouse which resulted in his working one day a week at that location. However, on March 10, 1977, another electrician bumped on and replaced him in the powerhouse relief job category. That new relief job electrician was not available to work on March 18, so the carrier assigned the experienced former relief job man.

On March 25, 1977, the former relief job electrician was again called to work in the powerhouse. At this time, the new relief job man was on duty, but the former incumbent was assigned to instruct the new man on the performance of the job duties.

The contention by the organization is that the claimant who was highest on the powerhouse seniority list, was available to work both days.

Further, the organization contends that the employees on the powerhouse seniority list were entitled to be called out for both days work and to receive overtime pay.

The carrier argues that the claim has been changed from the manner in which it was originally filed and handled at its initial stages on the carrier properties. The carrier concludes that the claim is not arbitrable in its revised form.

However, the carrier argues that, even if the claim is arbitrable, that it lacks merit because there's no contractual requirement that temporary vacancies be filled by employees on an overtime basis. They submit that many prior decisions have found that the carrier can make reasonable assignments which result in the most economical performance of job duties, and that they are not required to pay overtime wages in such circumstances, because this would amount to a penalty. The carrier argues that it is required to pay overtime in those instances when the work in question can only be done at that point in time which would amount to overtime work.

Although the arguments of the carrier by way of defense to the claim may have merit, it is not necessary to decide that question. The record in this case consists in the carrier's seniority rosters, plus the agreements between the carrier and the organization, and correspondence between them.

However, the essential elements of proof required to sustain the claim are more than the positions on seniority lists. A necessary element to establishing a prima facie case of a violation of the agreement, is the availability for work of the claimant. The record is devoid of any evidence which would substantiate the allegation that the claimant was available for work on the two days in question.


It has been held by the Board in many cases that the claimant is required to establish a prima facie case by the submission of valid evidence. Absent the required elements of proof in the form of clear evidence, then the claim has not been established. Since there is no evidence of the availability of claimant for work on the March 18 and 25 dates, the organization has not made its burden of proof and the claim is denied.

A W A R D

The claim is 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 1st day of August, 1979.