

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated Rule 11 of the April 2, 1945 controlling agreement when they did not distribute overtime equally from their record kept for electricians thereby depriving Electrician Steve Toth on September 28, 1978 the provisions of the Agreement at St. Louis, Missouri.
2. That, accordingly, Carrier be ordered to compensate Electrician Steve Toth eight hours (8') at time and one-half rate for September 28, 1978.

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 Organization claims a violation of Rule 11 in that an Electrician was not scheduled for overtime work on September 28, 1978, while another Electrician with greater overtime accumulation was called. Rule 11, Distribution of Overtime reads in pertinent part as follows:

"Record will be kept of overtime worked and men called, with the purpose of distributing it equally among those interested in participating."

Handwritten records for the year 1978 submitted by the Organization, and accepted for purposes of argument by the Carrier in its submission to the Board, show that just prior to September 28, six Electricians had accumulated from 40 to 44 hours of overtime (the Claimant having accumulated 40 hours). Three other Electricians in the work group had accumulated 48, 49 and 80 hours respectively, but these are not at issue since none of these three was called to work on September 28.

Electrician McKeown was called for work on September 28. He had also been assigned on the previous day, September 27, as a result of which his overtime accumulation had risen from 36 (then lowest on the list) to 44.

As to the portion of the rule restricting its application to employees "interested in participating", there is no showing that the Claimant or any others were not interested.

The Carrier's central argument is that the rule need not be interpreted to require in every single instance that only the employee with the lowest overtime accumulation at that moment be called, but rather that there is an obligation over a period of time to maintain a generally equal overtime distribution. In the Carrier's defense, a number of past awards are cited as so holding. Many of such Awards, however, concern themselves with rule language calling for overtime distribution "as equally as possible" or "as near as possible, an equal distribution".

Other Awards deal with continuous assignment into a second rest day or other particular circumstances or practices. The rule applicable here, however, is more precise, stating simply that overtime shall be distributed "equally", placing a restriction on the Carrier's right of assignment which this Board may not vary.

Nor did the Carrier make any showing that the Claimant could not have been assigned to work on September 28, when he (as well as three other employees) had a lower overtime accumulation than Electrician McKeown. The Carrier failed to show any other practice employed by the parties in carrying out the rule; indeed, the sparse record which is provided shows in previous instances that the Electrician with lowest overtime accumulation was assigned.

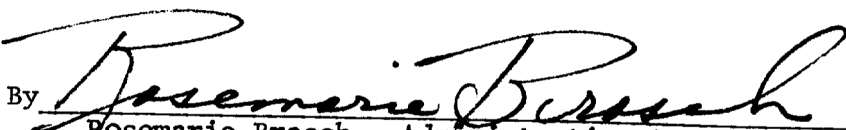
A sustaining award is warranted, but -- in line with the general reasoning applied in the Second Division for time not actually worked -- payment for eight hours at straight time rather than the punitive rate is appropriate.

A W A R D

Claim sustained to the extent of payment to the Claimant of eight hours' pay at straight time rate.

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 6th day of May, 1981.