

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 1, 1945 controlling agreement when they did not distribute overtime equally from their record kept for electricians thereby depriving Electrician G. Walker on October 10, 1978 the provisions of the Agreement at St. Louis, Missouri.
2. That, accordingly, Carrier be ordered to compensate Electrician G. Walker eight hours (8') at time and one-half rate for October 10, 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 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.

The circumstances in this dispute are similar to those in Award No. 8708, and the Board reaches the same conclusion.

Several points require emphasis here, however. The Organization argues violation of Rule 11, Distribution of Overtime, by the assignment of an employee with 88 hours' overtime accumulation over a ten-month period, in comparison to the Claimant with overtime accumulation of 41 hours. Seven other employees in the group had accumulations of from 41 to 49 hours. The Carrier argues that the Claimant was treated equally with seven other employees and was so far behind the employee who was assigned because of lack of desire to perform overtime work on the part of the other employees. No evidence was provided by the Carrier to support this argument, and thus it can carry no weight.

The Carrier also argues that the acceptance over a period of time of the condition under which one employee received far more overtime than others is a "practice" accepted by the Organization and the other employees and therefore binding. As reviewed in Award No. 8708, the language of Rule 11 is clear and precise. Rule 11 states in part that "Record will be kept of overtime ... with the purpose of distributing it equally among those interested in participating".

Practice to the contrary, even if shown to exist, cannot defeat the unambiguous meaning of the Rule. In addition, the failure to make a claim of alleged rule violation in one instance does not bar the making of a claim in a later instance, particularly where the remedy sought goes only to the current situation.

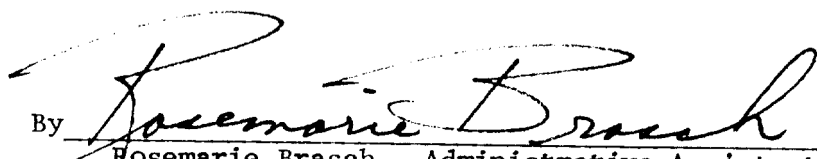
For reasons outlined in Award No. 8708, the claim will be sustained except as to payment of time at the punitive rate.

A W A R D

Claim sustained to the extent of payment of eight hours at the 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.