

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10113
Docket No. 9650
2-CofG-CM-'84

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Central of Georgia Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement the Carrier violated Rule 10 when it failed to call Carmen William Swanson, H. T. Thompson and C. E. Kynard for overtime on August 28 and August 29, 1980.
2. That the Carrier be ordered to pay Carman William Swanson eight (8) hours' pay at the rate of time and one-half for August 28, 1980 and Carmen H. T. Thompson and C. E. Kynard, eight (8) hours' pay each at the rate of time and one-half for August 29, 1980.

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 employees 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 were given due notice of hearing thereon.

Carrier operates a car repair facility at Columbus, Georgia and employs carmen to perform work within their craft. The Columbus, Georgia facility received a report on August 24, 1980, that L & N car 193600 set out at Carrollton, Georgia needed a different pair of wheels. On August 28, Carman A. L. Wynn was sent from Columbus to Carrollton to install the wheels on L & N Car 193600. From Carrollton, Wynn went to White Sulphur Springs, Georgia to repair a train-line on San-314159 that was set out on August 25, 1980 and reported to the Columbus Shop in the morning of August 26, 1980. Wynn left Columbus Shop on August 28 at 7:30 A.M. and returned at 8:30 P.M. He earned five and one-half (5½) hours overtime. On that date, Wynn had earned and was paid for 168¼ overtime hours from January 1 to August 28, 1980. For the same period, the Claimant, Swanson earned and was paid for 66½ overtime hours.

On August 29, 1980, Carmen Wynn and Duvall were sent from Columbus, Georgia to Gold Ridge, Alabama to install two pair of wheels in NATX 71200. From there they were sent to Kellyton, Alabama to book some 84 cars, then North Dadeville, Alabama to book 98 more cars and then to Opelika, Alabama to repair 6 cars at Uniroyal Tire Company. Wynn and Duvall left Columbus, Georgia on August 29th at 7:30 A.M. and returned at 10:30 P.M. Each of them earned seven and one-half (7½) hours overtime. The overtime board showed that Wynn had already earned and

was paid for 168 $\frac{1}{4}$ overtime hours and Duvall had earned and was paid for 151 $\frac{3}{4}$ overtime hours. At the same time, Claimant T. Thompson had earned and was paid for 73 $\frac{3}{4}$ overtime hours and Claimant Kynard had earned and was paid for 71 overtime hours.

At that time Wynn and Duvall were regularly scheduled for the first shift while the Claimants, Swanson, Thompson and Kynard were all scheduled for the second shift.

Employees contend that the Carrier violated Rule 10 by permitting such a disparity of overtime hours to accrue to Wynn and Duvall in relation to the overtime hours accrued to each of the Claimants during the same time period. The pertinent language in Rule 10 reads as follows:

"When it becomes necessary for employees covered by this agreement to work overtime, they shall not be laid off during regular working hours to equalize the time.

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime as equally as possible consistent with forty (40) hour week rules."

We agree with the Carrier that generally, when a road trip becomes necessary, it may not have advance knowledge of the time required to complete the work and that the assigned employees will work beyond their regularly scheduled eight (8) hours. But here Carrier knew on August 24, 1980 that L & N car 193600 was set out at Carrollton, Georgia and that repairs were required. The Carrier certainly should have known that carman Wynn had already accumulated 168 $\frac{1}{4}$ overtime hours. Even though Wynn earned 5 $\frac{1}{2}$ hours overtime on August 28, 1980 in addition to his 168 $\frac{1}{4}$ accumulated overtime hours they again sent him out on a road trip on August 29, 1980 wherein he earned additional 7 $\frac{1}{2}$ overtime hours. Similarly, the Carrier knew on August 29, 1980 that Duvall had accumulated 151 $\frac{3}{4}$ hours. Carrier knew on August 28 and 29, 1980 that the disparity of accumulated overtime hours between Wynn, Duvall and each of the three Claimants was of such unconscionable disparity that it should have been alert to the fact that overtime was not distributed as equally as possible consistent with the forty (40) hour week rules.

Equalization of overtime under Article 10 is not confined to employees within each shift. Where employees on the first shift, as here, accumulate more than twice the overtime hours than those accumulated by employees on the second shift, it becomes the duty and indeed the obligation of the Carrier to make every effort to permit overtime to be earned by the employees on the second shift so that an effort of equalization is apparent. There is no evidence that the Carrier even attempted any reasonable effort to do so.

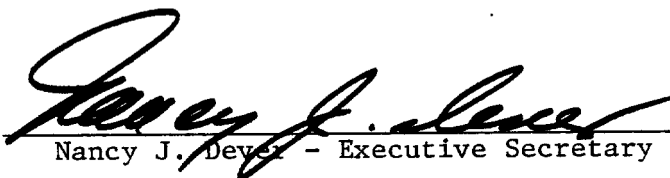
Each of the Claimants worked and were paid eight (8) straight time hours on their respective dates of August 28 and 29, 1980. There is no rule or practice which entitles each of them an additional eight (8) hours pay at the overtime rate for the overtime hours worked by those assigned to work on August 28 and 29, 1980. Thus, Claimant Swanson shall be paid for five and one-half (5 $\frac{1}{2}$) hours at the applicable overtime rate of pay for August 28, 1980 and Claimants Thompson and Kynard shall each be paid for seven and one-half (7 $\frac{1}{2}$) hours at the applicable overtime rate of pay for August 29, 1980.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of October, 1984