

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(The Baltimore and Ohio Railroad Co.

Dispute: Claim of Employees:

No. 1. That Carrier violated the controlling Agreement, specifically, Rule 8, Distribution of Overtime, when on the date of May 8, 1981, they allowed a carman with 658 hours accumulative overtime, to work at New Castle, Pennsylvania, in lieu of Claimant, who was, in fact, entitled to be called from the overtime board, was available, qualified, and had only 271 hours accumulated overtime.

No. 2. That, accordingly, Carrier be ordered to compensate Claimant for all time lost account this violation of Rule 8 of the controlling Agreement, Claimant, A. E. Cialella, two (2) hours and forty (40) minutes, call time.

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 employes 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.

Claimant was not called to perform overtime service covering the 500 mile air brake test on the Philadelphia Trailer Jet, Engine #4308. Instead, Carman A. Nocera was instructed by the Carrier to remain on duty after his first shift and perform the overtime work. The record reveals that the Claimant was twenty miles from New Castle Junction, Pa. while Carman Nocera was on duty at New Castle Junction and immediately available to perform the air brake test. A call to the Claimant would have resulted in unnecessary delay to the train.

The Organization contends that the Carrier should have called the Claimant according to the dictates of Rule 8 and allowed Carman Nocera to go home. The Organization points to the fact that the Claimant had only 271 hours of overtime while Nocera had accumulated 658 hours overtime as justification for its argument.

The Carrier argues that the disparity in overtime hours arose for two specific reasons. First, the Claimant was absent from duty due to illness for a seven-month period immediately preceding the claim date, October 2, 1980 through May 6, 1981. Second, Carman Nocera is a member of the New Castle Junction Wrecking Crew which creates more opportunities to work overtime. Additionally, the Carrier takes the position that it is under no obligation to assist the Claimant in making up lost overtime opportunities and was not required under the provisions of Rule 8 to call the Claimant.

"Rule 8

Record will be kept of overtime worked with the purpose in view of distributing the overtime equally among the employes of each craft insofar as their qualifications will permit.

There will be, as near as possible, an equal distribution of overtime between employes who voluntarily request to be placed on the overtime call lists."

Many Awards of this Division have held that the Carrier is not required to maintain absolute equalization of overtime. See Second Division Awards 6613, 7624 and 7897.

In Second Division Award 8335, the Board concluded that "a claim for improper distribution must be measured over a period of time and not tied to one particular incident. From the record, it is clear that the Organization failed to prove that the Claimants were denied access to substantially equal overtime over a period of time".

In the instant case, the Organization has not met its burden of proof vis-a-vis a substantial denial of access to overtime. There has been no showing that this Claimant was deprived of overtime opportunities extending over a reasonable period of time because of the Carrier's assignment on the day in question. To the contrary, the Board notes that the Claimant had accumulated 271 hours of overtime albeit during a specified period of time.

There are a plethora of Awards which hold that an equalization system of overtime, as provided for here in Rule 8, does not necessarily require that a particular employee be selected or called for a particular assignment. Rather, these overtime rules have been interpreted to require that overtime be distributed as equally as possible over a reasonable period of time. There is no evidence in the record to demonstrate that the Carrier has not complied with this principle. Therefore, the Carrier did not violate the overtime provisions of Rule 8. See Second Division Awards 5136, 4980, 2123, and 2035.

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Award No. 10256
Docket No. 9924
2-B&O-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 6th day of February 1985.