Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10779
SECOND DIVISION Docket No. 9364
2-L&N-MA-'86

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(International Association of Machinists and Aerospace
( Workers
Parties to Dispute: (
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

That as a result of Louisville & Nashville Railroad's Roundhouse Foreman M. Rick, at Howell, Indiana sending on-duty Machinist John Wilderman, who is not on the Miscellaneous Over-Time Board, on an emergency road trip to Poseyville, Indiana on November 19, 1979 to correct a fuel problem on Engine Nor. 1064, Carrier violated Agreement particularly but not limited to Appendix B, Paragraph 8; and over a thirty year established practice concerning road trips.

As a result of Carrier's improper handling of the road trip, Machinist George Kendle, who was first out and available on the Miscellaneous Over-Time Board, should be paid 3 (three) hours at the time and one-half rate of pay.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employes 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 had jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

During the second shift on Monday, November 19, 1979, the Carrier sent an on-duty Machinist to perform line-of-road mechanical repairs. Specifically, Machinist Wilderman corrected a fuel problem on Engine No. 1064 at Poseyville, Indiana. He departed the Carrier's Howell, Indiana shop at 5:30 P.M. and returned at 8:30 P.M. Machinist Wilderman completed the remainder of his usual trick and was fully compensated for his eight hour tour of duty. Claimant, a Machinist at Howell, was the first worker out on the Miscellaneous Overtime Board on November 19, 1979.

The Organization avers that the Carrier improperly assigned Machinist Wilderman to perform emergency line-of-road mechanical repair work. The pertinent portion of the Rule 8 Note in Appendix B, which describes how to allot overtime, provides that: "All emergency road work will be performed by

employes assigned to the miscellaneous overtime board." Inasmuch as Locomotive No. 1064 experienced a mechanical breakdown outside yard limits, Claimant Wilderman was undeniably performing emergency, as opposed to routine, repairs. Since the work involved in this dispute was performed on a regular work day, Claimant should have been called from the Miscellaneous Overtime Board in lieu of using either an on-duty Machinist or a worker from the Sunday/Holiday Overtime Board. In addition to violating the clear language in Rule 12(b) and Rule 8 of Appendix B, the Carrier acted contrary to a thirty-year past practice of assigning all emergency line-of-road work to Machinists listed on the Miscellaneous Overtime Board. On the property, the Organization submitted statements from many workers (at various points on the Carrier's system) attesting to the existence of the prior practice. In late 1979 before this Claim arose, the Carrier attempted to procure an Agreement with the Organization which would have amended Appendix B, Rule 8 to conform to the Carrier's interpretation of the Rule. The Organization rejected the Carrier's proposal. Rule 18 of Appendix B provides for the proper remedy in this case. The Board should order the Carrier to pay Claimant the amount of money he would have earned if he had been called to perform the line-of-road emergency mechanical repairs on Unit Number 1064.

The Carrier contends that there is no Rule in the applicable Agreement which requires the Carrier to call a Machinist from the Miscellaneous Overtime Board and compensate him at the overtime rate when an on-duty Machinist can accomplish the line-of-road repairs during his regular assignment. In this case, the Carrier determined that Machinist Wilderman could travel to Poseyville, repair the fuel malfunction, and return to the Howell shops within his regularly assigned hours of duty. Rule 12 applies solely to distributing overtime. Machinist Wilderman did not work any overtime, and so, Rule 12 is inapplicable. Where the line-of-road repairs, emergency or otherwise, do not entail any overtime work, the Carrier retains the prerogative to assign the work to on-duty forces. Award No. 1 of Public Law Board No. 3067 adjudicated a similar Claim brought by the Carmen's craft. In denying the Carmen's Claim, Public Law Board No. 3067 ruled that any past practice of calling Carmen from the Miscellaneous Overtime Board was immaterial because the Agreement did not bar the Carrier from using an on-duty Carman when no overtime work was involved. If this Board should determine that there is merit to the Organization's Claim, the requested remedy is excessive. Rule 11 states that if a shop craft worker is instructed to perform emergency road work, his travel time shall be compensated at the straight time rate.

Rule 12(b), which provides for equal overtime distribution, states:

> "Overtime will be distributed as equally as possible among the different classes of employes of each department or sub-department as far as the character of the work will permit."

In Appendix B, the parties elaborately explain how Rule 12(b) is to be applied to insure that overtime is evenly allocated. Rule 8 of Appendix B reads:

"8. Where both a Sunday/holiday and a miscellaneous board are maintained, all Sunday-holiday work (except as shown in NOTE next below) will be worked by men assigned to the Sunday-holiday board.

On other days all overtime (except wrecking service) will be worked by men assigned to the miscellaneous overtime board.

NOTE: All emergency road work will be performed by employees assigned to the miscellaneous overtime board. All wrecking service will be performed by men regularly assigned to wrecking crews, when available. Men assigned to wrecking crews will not lose their turn on the overtime board or boards to which assigned unless their turn is called while performing wrecking service.'

These contractual provisions appear in a Consolidated Shop Crafts Working Agreement. The Carmen brought an identical Claim before a Public Law Board contending that the Carrier violated Rule 12(b) and Appendix B, Section 8 when the Carrier directed an on-duty Carman to perform emergency line-of-road repairs instead of calling a Carman from the Miscellaneous Overtime Board. In declining the Claim, Public Law Board No. 3067, Award No. 1 authoritatively adjudged that the:

". . . provision the Employees rely upon most - - that is, the NOTE to Section 8 of Appendix B - - merely requires the Carrier to use the miscellaneous overtime board for emergency repairs instead of the Sunday-holiday board. The provision applies only to a narrow set of circumstances. It does not apply to all line-of-road work nor to the type involved in the claims here, that is, work performed during weekday shifts. In sum, the parties' agreement does not require the Carrier to pay overtime under the circumstances of the claims." [Emphasis in text.]

In essence, Public Law Board No. 3067 found that the Note following the Rule 8 of Appendix B only applies to the first paragraph of Rule 8 which addresses the performance of work on Sundays and on holidays. The note, regardless of whether the line-of-road work is emergency or routine, does not modify the second paragraph of Rule 8 which pertains to overtime work performed on days other than Sunday and holidays.

Although it found some evidence showing that the Carrier had usually called a shop worker from the Miscellaneous Overtime Board to perform line-of-road repairs, Public Law Board No. 3067 ruled that any past practice does:

> ". . . not support the proposition that the Carrier can be made to pay overtime in the absence of a clear rule requiring such payment. In this case, it is not a matter of an ambiguous rule which has been interpreted in only one way over a number of years. Rather, there is no rule which supports the claims. It would be entirely improper for this Board to now amend the agreement to include such a requirement. Finally, even if past practice were a relevant factor under the circumstances (which it is not), there is no showing that such practice was system-wide and mutually agreed upon by the parties so as to be entitled to consideration.'

Public Law Board No. 3067 conclusively adjudicated the very issues which are presented to us in this case. Under the doctrine of stare decisis, we must follow past decisions which have resolved identical issues, unless the precedent was palpable error. Following past decisions which have resolved similar disputes promotes stability and predictability in Railway Labor relations. If this Board were to totally disregard the salient precedent on this property, we would be improperly encouraging the parties to go forum shopping whenever they received an unfavorable decision.

After perusing the record before us, we find no evidence which would warrant an outcome different from the result reached in Award No. 1 of Public Law Board No. 3067. For the reasons more fully set forth in that decision, we must deny this Claim.

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 12th day of March 1986.