

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

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

Dispute: Claim of the Employees:

1. That the Louisville and Nashville Railroad Company, hereinafter referred to as the Carrier, violated the controlling agreement when, on August 30, 1983, on-duty employees were sent from their seniority points to perform line-of-road work which should have been performed by employees on the miscellaneous overtime board at Evansville, Indiana.

2. And, accordingly, the Carrier should be ordered to additionally compensate Carmen, L. A. Whitsell, and K. W. Benton, hereinafter referred to as the Claimants, for the amount they would have earned had they been called and used to perform this work.

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.

In the instant case the Carrier assigned two on-duty Carmen to perform line-of-road repair. Those Carmen left their seniority point on August 30, 1983, to perform road service and returned within their normal tour of duty. They received no overtime compensation.

The Organization charges that the Carrier violated Rule 12 and its Interpretations as written in the numerous sections of Appendix B. Specifically, the Organization alleges that under the Agreement the Carrier was obligated to assign such work to the Miscellaneous Overtime Board and not to the on-duty Carmen. The Claimants herein were placed on the Overtime Board and

stood for service, but were not called. The Carrier failed to follow both past practice and the Agreement between the parties and as such, compensation for Claimant's loss is due.

The Carrier maintains that no applicable Rule or section of the Agreement requires the Carrier to assign such work to the Miscellaneous Overtime Board. It argues that there was no overtime earned and therefore Rules on the distribution of overtime have no bearing herein. In addition the Carrier is "not required to create overtime for such road work" and under a prior Award (Public Law Board No. 3067, Award No. 1) the Carrier has the right to utilize on-duty Carmen during their assigned hours to perform line-of-road repair.

Our review of the case at bar (and prior cases with distinct differences, e.g., Second Division Award 7928) supports the Carrier's position. Rule 12 and its Interpretations in Sections 8 and 17 of Appendix B and the NOTE thereto, do not restrict the Carrier from directing an on-duty Carmen to perform line-of-road repairs in these circumstances. It is not within the province of this Board to go outside the language of the Agreement when it is clear from the language the intent of the parties. We are in Agreement with Public Law Board No. 3067 that the NOTE to Rule 8 applies only to a narrow set of circumstances (e.g. the first paragraph of Rule 8) as stated in pertinent part:

"8. Where both a Sunday/holiday and a miscellaneous board are maintained, all Sunday-holiday work (except as shone (sic) 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
..."

As such, the work herein disputed, being neither emergency nor work performed on a Sunday or holiday is relegated to the second paragraph covering overtime which would pertain to the Miscellaneous Overtime Board. However, inasmuch as there was no overtime and identical Claims have been previously decided on this property (Second Division Award 10779; Public Law Board No. 3067, Award No. 1), we deny the Claim under the doctrine of stare decisis and the logic of the two prior Awards cited above.

A W A R D

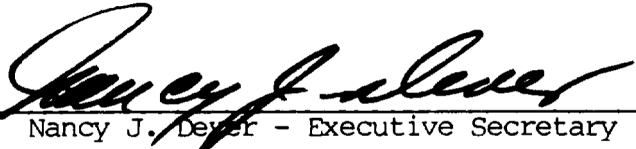
Claim denied.

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Award No. 11136
Docket No. 10872
2-L&N-CM-'87

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 28th day of January 1987.