

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Roger Johnston was unjustly deprived of wages to which he was entitled when the Chicago and North Western Transportation Company violated the Collective Bargaining Agreement, particularly Rules 11, 28, and 124, for the period of November 17, 1983, through December 23, 1983, when Carrier failed to properly distribute the overtime work at Belvidere, Illinois.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman Roger Johnston in the amount of 32.5 hours at the overtime rate of pay of \$19.515 per hour, for a total of \$634.24.

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 waived right of appearance at hearing thereon.

Claimant seeks overtime payments for the period from November 17, 1983, through December 23, 1983, claiming a total of 32.5 hours. The Rule claimed to be violated is Rule 11 which reads in relevant part:

"Rule 11: When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time.

At shops, enginehouses, repair tracks and inspection points, overtime will be distributed as equally as possible between the men of such craft or trade at each shop, enginehouse, repair track or inspection point . . ."

The Carrier answered the claim on March 12, 1984, stating in part:

"Records indicate that prior to November 17, 1983 Mr. R. G. Johnston, during his regular shift had attempted to check the tiedowns and it bothered his back and informed Mr. J. F. Ziegler the Car Foreman and he was placed on other jobs. Mr. Johnston was not utilized on the claim dates for this reason. Mr. Johnston was asked on January 30, 1984 if he wanted to stay and check tie-downs and he declined, however, on February 6, 1984 Mr. Johnston did work one (1.0) hour overtime checking the tie-down."

The record shows that Claimant had received a back injury on March 9, 1983, and was placed on light duty for approximately ten days. These facts make the response of the Carrier completely irrelevant. The Board will not extrapolate without evidence backwards from January 30, 1984, the assumption that Claimant could not perform overtime during this period.

The Carrier also answered asserting that the Claim was without Rule support. Rule 11 obligates the Carrier to make a good faith attempt to regulate overtime. Of course this will not be done with mathematical precision, but equality should be attempted. It is obvious that the Carrier made the assumption that Claimant would decline the overtime and left him out of the equation. Barring some physical limitation such as light duty or the like, the Carrier is obligated to offer to each employee covered by Rule 11 a share of the overtime when the needs arise.

Because the Carrier did not make a good faith attempt to equalize Claimant's share of the overtime, his Rule 11 rights were violated. The Carrier submitted an Award from this property which rightfully held that on a single incidence basis the Carrier has leeway to make differing assignments. Second Division Award No. 8488. We concur in that Award. Oftentimes inequities must exist so that equalization is possible, i.e. a "catch up" situation.

Such was not the case here. Within the time frame in question many overtime assignments were made and no attempt was made to equalize Claimant. He is claiming 32.5 hours, the total overtime worked by other employees with more overtime than Claimant during the relevant time of the Claim. The Carrier rebuts this by stating that if there is any liability the overtime of the other employees should be averaged and the overtime worked by the Claimant subtracted from that average to form the basis of a Claim.

However, the data cannot be considered in the abstract. Claimant worked 8.5 hours, began with a base of 458.75 total hours and ended with a base of 467.25. Carman Clouse worked 11 hours, began with a base of 491.75 and ended with a base of 502.00. Carman McElhinney worked 18.75 hours, began with a base of 528.75 and ended with a base of 544.75. Carmen Ekleberry had only one overtime date of 2.75 hours and ended with a base of 480.75 hours.

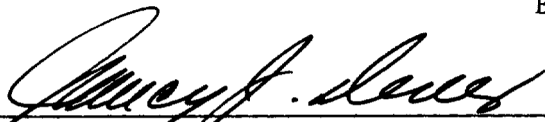
When this Board observes the total picture, it can only conclude that no attempt was being made to equally distribute the overtime. Claimant was behind the others at the start of the period and ended the period even further behind. This is not the type of deviation permitted under the cited Awards. Therefore, we find that the Claim should be granted. The data shows that on each of the dates that the Claimant and the other employees worked tiedown overtime, there was an overlap. Since Claimant cannot double up his overtime within the same time frame, the Board will subtract the 8.5 hours worked from the 32.5 hours claimed. This results in a total of 24 hours payable at the overtime rate.

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 1st day of July 1987.