

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. That at the Sunnyside yard, New York, the National Railroad Passenger Corporation violated the controlling agreement and the established past practice for implementing said agreement when Electricians J. McDonald, A. Cicalese and H. Somers worked overtime on February 1, 1984, after arbitrarily being assigned to work by Supervisor P. DeCarlo.

2. That, when the foregoing electricians were allowed to work, Electrician J. Mitchell, who should have worked under the controlling agreement and past practice, suffered a loss in earnings on February 1, 1984.

3. That accordingly, Electrician J. Mitchell be compensated at eight (8) hours pay at time and one-half the hourly rate which he would have earned if Amtrak had not violated the said agreement and past practice on February 1, 1984.

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 were given due notice of hearing thereon.

Claimant is employed as an Electrician by Carrier at its Sunnyside Yard, New York. Claimant had applied for overtime work pursuant to the Agreement. On February 1, 1984, Carrier assigned three Electricians, but not Claimant, to perform overtime work. The Organization thereafter filed a claim on Claimant's behalf, asserting that because of Claimant's position on the overtime rotation list, Claimant should have been assigned to work overtime on February 1, 1984.

This Board has reviewed the evidence in this case, and we find that the Organization has presented sufficient evidence to support its claim. The record is clear that the Carrier did not call in the proper Claimant to perform the work; and pursuant to the established procedures between the parties calling for rotating overtime, the Carrier was in violation of that Agreement. Therefore, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.

CARRIER MEMBERS' DISSENT
TO
AWARD 11440, DOCKET 11088
(Referee Meyers)

The Majority erred in finding Carrier in violation of Rule 13 (f).

Subject rule reads in relevant part, as follows:

"...Overtime to be distributed in conjunction with the duly authorized local committee of the craft or their representative and the Local Management. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

In its initial declination of the claim on the property, the Carrier advised the local committee as follows:

"...on February 1, 1984 General Foreman P. DeCarlo was notified at 3:25 p.m. that there was a need for emergency overtime and that he could not locate any Union Representatives..."

* * * *

"At the time, Mr. J. Mitchell [Claimant] was not present to be notified that he would not make the list for overtime."

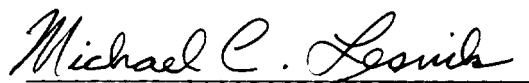
While the Organization responded that "...a Union Representative was available on the date and for the time specified...", it failed to name that Representative, and failed to furnish a statement from the mystery Representative attesting to his availability. The Carrier's contention that the Claimant was unavailable stood unrefuted. All the Organization said was that his presence was "...worthless, in relation to the nature and thrust of the claim."


The foregoing, coupled with the fact the Organization failed to provide evidence that overtime had not been evenly distributed over the long term, should have been sufficient basis for this Board to follow the precedent established in Second Division Award 10420 in which this very same Referee denied a similar dispute between these same parties.


Finally, to add insult to injury, the Majority knowingly disregarded the general direction of prior Awards of this Board concerning compensation for time not worked which dictates that in cases of Agreement violations, the straight time rate of pay is appropriate; the overtime rate is applicable only to time worked while the pro rata rate is the measure of value of work lost.

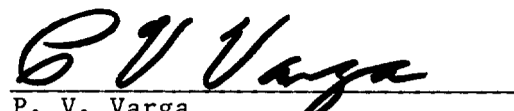
It is clear that all the Majority accomplished here was to assess a penalty against the Carrier for at best a technical agreement violation, and to plant the seeds for future disputes over Rule 13 (f) as well as the appropriate nature and level of compensation.

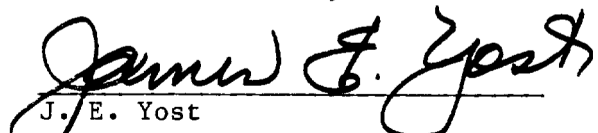
The Award is palpably erroneous and represents an assessment of an improper and unwarranted penalty against the Carrier which is not supported in logic, Agreement language or precedent of this Board concerning both Rule 13 (f) and the appropriate level of compensation. Accordingly, we must register our vigorous dissent.


M. C. Lesnik


M. W. Fingerhut


R. L. Hicks


P. V. Varga


J. E. Yost

March 31, 1988