

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11843
Docket No. 11629
90-2-88-2-114

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Union Pacific Railroad Company
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company violated Rule 8 of the controlling Agreement and a Memorandum of Agreement dated May 1, 1980, which was created to stop the overtime abuses.
2. That the Missouri Pacific Railroad Company be ordered to comply with the guidelines set forth in the on property Agreement and to compensate Carman J. Flores in the amount of thirty (30) minutes at the straight time rate.

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.

A Claim was filed by the Organization on the grounds that the Carrier had been in violation of Rule 8 of the Agreement when it required a Carman to make a round trip in the company truck during a lunch period. The Carman in question was paid at the straight-time rate. According to the Claim, the work should have been paid at the overtime rate to the Claimant who was "...first out on the Overtime Board" on the date the alleged Agreement violation occurred.

When the Carrier denied the Claim it did so in view of the provisions of Rule 6 of the Agreement which it argued permits payment for work during the lunch hour at the straight-time rate.

The focus of the instant Claim is on the overtime rights of Carmen on the Overtime Board. Resolution of the Claim centers on whether the Carrier is required to go to such Board when it requires work of the type in question to be done during the lunch hour, or whether it is contractually permissible for it to go to the provisions of Rule 6.

The Rules in question state the following:

"RULE 6. WORK DURING LUNCH PERIOD

Employees required to work during, or any part of, the lunch period, shall receive pay for the length of the lunch period regularly taken at point employed at straight time and will be allowed necessary time to procure lunch (not to exceed thirty minutes) without loss of time.

This does not apply where employees are allowed the twenty (20) minutes for lunch without deduction therefor."

"RULE 8. DISTRIBUTION OF OVERTIME

(a) When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time.

(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairman will, upon request, be furnished with record."

According to the Organization the Carrier was also in violation of the Local Truck Driving Agreement at Houston, Texas, effective May 1, 1980. This Agreement states, in pertinent part, the following:

"Effective May 1, 1980 the 7:00AM to 3:30PM Truck Driver Job No. 4-20 will be discontinued. The job will be re-bulletined as Carman on the Repair Track and other Carman duties, Monday thru Friday, 7:00AM to 3:30PM, Rest Days Saturday and Sunday, effective May 1, 1980.

A truck driver overtime board will be established 7:00AM, May 1, 1980. The truck drivers that are on this overtime board will be rotated monthly according to seniority. If a person desires to be placed on this truck

drivers' overtime board, he will be expected to break in and be given a chance to qualify. When he is deemed qualified by his supervisor, he will be allowed to go on the truck driver overtime board. All truck drivers must have a commercial license or chauffeur's license, the cost of which will be borne by Missouri Pacific.

All trips with the pick-up truck will be worked off the Rip Track overtime board."

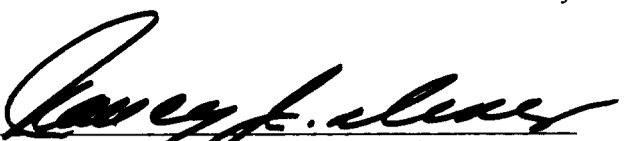
A review of the General and Local Agreement provisions at bar shows that neither Rule 8(a) and (b), which deals with overtime equalization, nor the Local Houston Agreement, which deals with the establishment of a truck driver Overtime Board, bar the Carrier from going to Rule 6 when it wishes a Carman to do work during a lunch period. The latter Rule permits, for this short time-frame, with qualifications as stated therein, the Carrier to pay Carman the straight-time rate. The Claim appears to want to elicit an Award from the Board whereby the Carrier would be barred from going to Carmen at straight-time rate when it is a question of driving a pick-up truck during the lunch period. The Board cannot find such intent in the language of either Rule 8 nor the Local Agreement and it must, accordingly, deny the Claim. As the moving party, the Organization has not sufficiently met its burden of proof in the instant case.

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 25th day of April 1990.