

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Southern Railway Company)

STATEMENT OF CLAIM:

1. That under the current Agreement the Carrier improperly called Carmen for overtime at Knoxville, Tennessee on June 15, 1987.

2. That accordingly, the Carrier be ordered to pay Carmen C. M. Curtis and D. A. Cox nineteen and one-quarter (19 1/4) hours' pay at the overtime 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.

Rule 9 of the Agreement provides for the method of payment of road work overtime. Rule 10 of the Agreement establishes the method of distribution of overtime. The second paragraph of Rule 10 provides:

"Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime as equally as possible consistent with forty (40) hour week rules."

At Knoxville, Tennessee, three overtime boards are maintained, repair track board, yard board and derrick board. At approximately 6:30 P.M. on June 15, 1987, two units of a locomotive and a freight car derailed at Middlesboro, Kentucky. Carrier's General Foreman was required to dispatch a crew to rerail the equipment. Since this overtime would accrue to Carmen on the repair track board, Carrier contends that the General Foreman attempted to call employees on that board for the assignment and was unable to contact anyone. The Foreman next, according to Carrier, called all the names on the yard board, again without success. Finally he was able to fill the assignment from the derrick overtime board.

Two weeks after the overtime was worked a Claim was initiated contending that the Agreement was violated when Carrier "hand picked" Carmen for overtime work and employees from the repair track board were not given the work they were entitled to perform. It was argued that Claimants were home and available at the time but were not called.

Carrier has defended against the Claim on two principal basis; 1), Claimants were indeed called but could not be reached, and; 2), the Rule requires equal distribution of overtime and an appreciable difference between the overtime hours of Claimants and the Carmen used did not occur as a result of the assignment. In support of its defense Carrier has furnished a handwritten statement of the Foreman, prepared after the Claim was filed, and notes that the Foreman phoned the Local Chairman on the night of the incident to discuss the problem he was experiencing in securing a crew to work the derailment.

Resolution of this matter must be based on a credibility determination. If it is true that Claimants were home and were not called then they would be entitled to payment for the lost overtime opportunity because, to us at least, it is clear that they would be entitled to preference to the type of overtime work involved. However, we have nothing of substance to support the contention that they were indeed home at the time but were not called. All that we have is an unsupported allegation that they were home but were not called. The allegation is not backed up by statements from the individuals, nor is it supported by statements from others that may have known their whereabouts at the time.

On the other hand, it is unrefuted in the record that the General Foreman found it necessary to contact the Local Chairman to discuss the problem he was experiencing in securing Carmen to fill the assignment. Also, in the denial of the initial Claim it was clearly stated that the General Foreman "began at 6:40 PM calling the repair track board." After the Claim was filed the General Foreman prepared a handwritten note in which he stated that he called all employees listed on Claimants' overtime board.

The Organization, as Petitioner in this matter, has the burden of establishing certain basic elements of proof in support of its contentions. Within a week after it filed the original Claim it was placed on notice that an attempt had been made to call Claimants for the work. Nonetheless, additional proof countering this assertion, if indeed available, was not developed. Accordingly, the Claim must be denied.

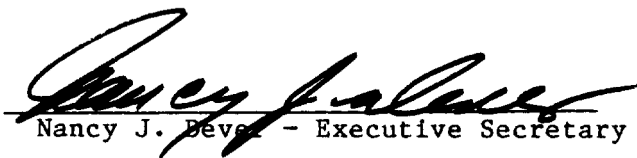
A W A R D

Claim denied.

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Award No. 11953
Docket No. 11757
90-2-89-2-59

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.