

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12032  
Docket No. 11633  
91-2-88-2-119

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth 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 violated Rule 10 when it failed to call Carman B. Adams for overtime on January 4, 1987.

2. That the Carrier be ordered to pay Carman B. Adams eight (8) 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.

At the time this Claim arose, Claimant was regularly assigned as a second shift carman in the Carrier's John Sevier train yard at Knoxville, Tennessee. His assigned days were Friday through Tuesday, with Wednesdays and Thursdays off.

On Sunday, January 4, 1987, a third shift carman, reported off due to illness at about 9:00 P.M. Therefore, the Carrier was required to call another carman to work overtime to cover his absence. The Carrier began by calling the carman who had worked the fewest hours of overtime according to a list maintained by the Carrier. That carman declined the work, as did the next four carmen in ascending order on the Carrier's list of overtime hours worked. Finally, the Carrier called a Carman who was assigned as a second shift carman on the Carrier's repair track. This Carman had the sixth fewest overtime hours according to the Carrier's list. He accepted the overtime assignment.

The Organization objects to the method by which the Carrier called carmen for this overtime assignment. The Organization asserts that an overtime board is maintained in the train yard foreman's office, on which carmen assigned to the train yard record their availability and willingness to work overtime. According to the Organization, a separate overtime board is maintained for overtime assignments on the repair track. Claimant was listed first on the train yard overtime board.

The first five employees offered the overtime assignment on January 4, 1987, were other carmen assigned to the Carrier's train yard. However, they were listed after Claimant on the overtime board. The Organization argues that Claimant should have been the first carmen offered the overtime assignment, and that no repair track carman should have been called until all train yard carmen on the overtime board had declined the work.

According to the Organization, the Carrier violated Rule 10 of the Agreement. Rule 10 provides:

"RULE 10

When it becomes necessary for employees covered by this agreement to work overtime, they shall not be laid off during regular working hours to equalize the time.

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."

However, Rule 10 does not require that overtime assignments be offered in the order in which employees' names appear on the overtime board, or that all train yard carmen be called for overtime work in the train yard before any carmen assigned to the repair track is called. Rather, Rule 10 requires only that the Carrier undertake to distribute overtime hours equitably among carmen. The procedure followed by the Carrier in this case fairly meets that objective.

Besides alleging a violation of Rule 10, the Organization argues that the Carrier's procedure represented a unilateral abrogation of established practice between the parties. The Organization maintains that, until this case, the established practice involved calling employees in the order they are listed on the appropriate overtime board. However, the Organization's initial Claim on the property, filed January 13, 1987, did not assert that such an established practice existed. Even after the Claim was initially denied by the Carrier, the Organization's reply did not allege such an established practice. The existence of such a practice was first asserted by the Organization in its February 13, 1987, appeal addressed to the Carrier's regional manager. On June 4, 1987, the Carrier replied to the Organization insisting that the Carrier had awarded the overtime assignment in this case as it always had in the past, by calling carmen beginning with the one with the least amount of overtime worked at that point.

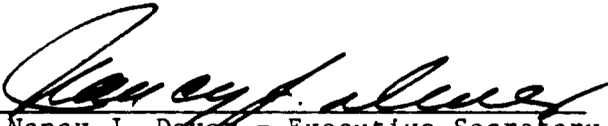
Because the Carrier's actions did not violate the letter or spirit of the applicable Rule in the Agreement, it was incumbent on the Organization to show that a practice had become firmly established between the parties which was breached. The Organization advanced such a Claim somewhat belatedly on the property, but it was promptly denied by the Carrier. The record does not establish what the traditional practice in fact had been. Since, however, it was the Organization's burden to prove its assertion in order for it to sustain its Claim, the lack of proof must be construed against the Claim. Accordingly, the Claim must be denied.

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 1st day of May 1991.