

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provisions of Rule 11 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen C. E. McCormick, P. Curran, L. J. Eversole, S. Harmon and R. Golden (hereinafter "claimants") when the carrier did not allow the claimants to work on overtime from February 26, 1988 through March 4, 1988.

2. That, accordingly, the claimants are entitled to be compensated for eight (8) hours each at the applicable Lead Carmen's time and one-half 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.

Beginning February 26, 1988, a five-day second shift Lead Carman's vacation absence existed on the Shop Track at Huntington, West Virginia. The Lead Carman's position was filled by a second shift Carman, and the resulting vacancy was filled from the Carmen's overtime board.

The Local Chairman initiated a Claim contending that the Lead Carman's position should have been filled on a day-to-day basis by five different Lead Carmen. The Claim was dated April 22, 1988. The Carrier states that the

Claim was received by the appropriate local officer on April 27, 1988. There is no evidence to challenge that this was the date on which the Claim was received.

The Carrier argues that the Claim must be dismissed on a procedural basis, since it was not received by the Carrier until 61 days following the "occurrence." Rule 35 provides in pertinent part as follows:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

There are varying interpretations of the meaning of the time limit Rule for Claim processing. The use of the word "presented," as in this instance, is generally interpreted to mean actual receipt of the Claim. Beginning with the day following the "occurrence" and noting that February 1988 had 29 days, the Carrier is correct in that the Claim was untimely "presented" and therefore may not be considered on its merits.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.