

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
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated 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) on February 14, 1989 when the Carrier failed to call James Ison (hereinafter "claimant") for overtime under the provisions of Rule 11 of the Shop Crafts Agreement.

2. Accordingly, the claimant is entitled to be compensated for eight (8) hours pay at the Carmen's applicable overtime rate for the carrier's violation of the aforementioned Agreement Rule.

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.

This dispute concerns the application of Rule 11 as to the proper distribution of overtime work. Rule 11 reads in pertinent part as follows:

"RULE 11

* * * * *

(c) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

* * * * *

(3) There will be an overtime call list (or call board) established for the respective crafts or classes at the various shops or in the various departments or subdepartments, as may be agreed upon locally to meet service requirements, preferably by employees who volunteer for overtime service. . . .

(4) There will be, as near as possible, an equal distribution of overtime between employees who voluntarily sign the overtime call lists.

* * * * *

(9) An employee refusing call in his turn will lose the turn the same as if he had responded. . . ."

In the instance here under review, the Organization contends without contradiction that the Carrier "failed to utilize the overtime call board to acquire the proper employee" to work an overtime opportunity on February 14, 1989. Instead, according to the Organization, the Foreman "hand picked" an employee. For the Claimant, whose name was apparently next on the call board, the Organization seeks appropriate pay.

The Carrier does not deny the facts as presented concerning the specific overtime opportunity. The Carrier argues, however, that the "remedy for the Claimant's alleged loss of opportunity . . . would be to allow him to equalize the hours, not outright payment as claimed." The Carrier notes that in the ensuing six weeks the Claimant had the opportunity to work 144 hours of overtime, while the employee used on the date in dispute worked only 26 hours of overtime.

In response to this, the Organization contends that what happened subsequently is not relevant and that the Rule violation occurred when the Carrier failed to follow the overtime call board.

Rule 11 does mandate the use of an "overtime call board," and there is an implied local practice here that overtime distribution is governed by the use of such call board. Remedy for failure to do so is less precisely stated -- "as near as possible, an equal distribution of overtime." In this instance, and in accord with many previous Awards, the failure to offer the Claimant his proper overtime opportunity was remedied immediately thereafter. The Rule simply does not call for the requested payment.

The Board notes, however, that the Rule provides for use of a call board in overtime distribution and that the use of such board is acknowledged at this location. Consistent failure by the Carrier to make use of the call board, if demonstrated, could well lead to a sustaining Award.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1992.