Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12316
SECOND DIVISION Docket No. 12346
92-2-91-2-136

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
(
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

1. That the carrier violated Rule 13 of the controlling agreement when they refused to pay Carman J. Stephens, Jr., lead carman at Tampa, Florida, the proper rate of pay on January 5, 6, 7, 9, 12, 13, 14, 16, 19, 20, 23, 26 and 30, 1989.

2. That accordingly, the carrier be ordered to compensate Carman Stephens twelve cents (.12¢) per hour at the time and one-half rate for eight (8) hours on each of the thirteen days the agreement was violated, for a total of $18.72.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On February 20, 1989, a Claim was filed on behalf of the Claimant on grounds that the Carrier was in violation of Rule 13 of the Agreement. Specific allegation was that the Claimant had been underpaid on 13 different days in January of that year when he had been called "to work overtime at Yeoman Yard on second shift." According to the Claim the Claimant had been consistently shorted $0.12 per hour on each shift on those days for a total shortage of $18.72.

The Rules at bar states the following, in pertinent part:

"Rule 13

When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

In denying the Claim the Carrier states, in effect, that an employee's higher rate is not to be paid, if such employee works on overtime basis, on a lower rated position. As the Carrier put it:

"In every instance that you claim...(for the Claimant) he was called to work a position at the overtime rate in addition to his normal assignment...(and he was) paid his higher rate of pay for the time he worked the Leadman position and he was paid the time and one half rate of the position he worked extra when called for overtime."

The Claimant's regular bid-in assignment was Leading Freight Car Repairman at Tampa. When called for overtime assignment on the days in question he worked assignment as Freight Car Repairman, a lower rated position.

Further refinement of the Carrier's Interpretation is found in correspondence by the Carrier to the Organization dated May 1, 1989. There the Carrier argues that if an employee is called from an overtime list on which an employee voluntarily placed himself, he is no longer performing work "at the request of the Carrier" and therefore, is "only entitled to the rate of the position he is performing service on." Since, therefore, the "requirement" provision of Rule 13 is not to be applied in these circumstances, an employee should receive pay only for the position worked. In this case, this was the rate for the lower paying position of Car Repairman and not Lead Car Repairman.

It is the view of the Board that the Carrier is attempting to circumvent the intent of the language of Rule 13 by its esoteric Interpretation of this Rule and the distinctions it is making between voluntary and required work. Under common sets of meanings all positions are filled, whether on regular or overtime assignment, by supervision because it is supervision who decides that a position needs to be (or is required to be) filled. If this is done on overtime basis, the requirement is just shorter in duration because of workflow, etc. in the particular shop or at the particular location. The requirement to fill any position clearly comes from management. The Board cannot see that Rule 13 contemplates anything one way or the other about the status of the employee filling such requirements by management for the simple reason that this Rule does not address this issue. The Carrier is attempting to read into this Rule an intent not supported by the language thereof. For the Board

to agree to such Interpretation would be tantamount to adding to the language of this Rule which the Board, of course, has no authority to do. The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.

CARRIER MEMBERS' DISSENT
TO
SECOND DIVISION AWARD 12316, DOCKET 12346
(Referee Suntrup)

The decision reached by the Majority in Second Division Award 12316 is palpably erroneous and cannot be accepted as a precedent.

Section "A" of Rule 49 Wage Scale of the Schedule Agreement on this property sets forth the agreed-to hourly **rates** of pay for mechanics. Section "B" of that rule specifies that a **differential** "above the rates shown in Section 'A'" will be paid for acting as lead men. The hourly rate of pay for the mechanic in this case was $14.064; the differential above that rate for acting as a lead man was 12 cents per hour. Section "B" makes clear that a differential is not part of the rate but is a payment above the rate, i.e., in addition to the rate.

The Majority completely ignored Rule 49's specificity (and the Carrier's argument) relative to payment of differentials. Not only has this Board rewritten the rules obligating the Carrier to pay the lead Carman differential on other than lead Carman positions, but it must also pay the differential at the time and one-half rate. In other words, according to the Majority, the differential is no longer restricted to lead Carmen positions, it is also applicable to a lead Carman whenever he works regardless of whether his services are voluntary or involuntary, straight time or overtime.

The Majority in Award 12316 acknowledged that it has no authority to add language to the agreement under the guise of

interpretation, but it did just that.

Instead of construing the agreement as a whole, the Majority chose to misread Rule 13, which is quoted below:

> "When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

Rule 13 refers to rates and does not mention differentials. It follows, of course, that Rule 13 does not require or even contemplate paying an employee a differential of 12 cents per hour above his rate when working an overtime assignment to which such differential **does not apply**. Rule 49, not Rule 13, is controlling as to payment of differentials. Section "B" of Rule 49 specifically states that an employee assigned temporarily to fill the place of an employee receiving a differential will be paid the differential. If the "rate" as contemplated in Rule 13 included differentials, such provision in Rule 49 would be superfluous.

It is a cardinal rule of contract interpretation to assume that the parties are capable negotiators who do not add superfluous language to agreement rules and that a specific rule takes precedence over general rules.

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