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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12343
Docket No. 11900
92-2-90-2-5

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
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the provisions of the September 1, 1974 Agreement, as amended, specifically Rule 12-2(a), by improperly instructing, allowing and/or permitting Car Inspector A. Galvan assigned to the train yard to go with the emergency road truck as an additional carman in place of Carman C. R. Waldrop, assigned to the repair track, when Carman Waldrop was available, qualified and willing to go as the additional carman.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Carman C. R. Waldrop in the amount of nine (9) hours at his pro rata rate of pay for violation on September 13, 1988.

FINDINGS:

The Third 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.

It is not disputed that on the date of claim, the Claimant was the low man (i.e. had the fewest number of overtime hours worked) on the first shift overtime board. As such he was entitled to be called for the overtime work involved in this Claim. Carrier contends, though, that its supervisors were not responsible for the bypass and subsequent use of the wrong Carman to accompany a truck driver and travel to Hereford, Texas, to re-rail an engine. It maintains that the Lead Car Inspector has historically assumed the responsibility for determining the proper person to be called and making the overtime calls upon receipt of advice from a supervisor that overtime work was necessary. It argues that in such circumstances it cannot be held liable for actions over which it had no control.

The Board does not agree. Carrier's placement of responsibility to make Carmen overtime calls with a Lead Car Inspector is no different from placement of similar responsibilities with a supervisor or crew caller. Whoever is delegated these responsibilities is acting as Carrier's agent, is expected to do such calling properly and in the event an error occurs is responsible for the error, which responsibility becomes the liability of the Carrier, because the calling was done by its agent.

The Claim will be sustained for 8 hours at pro-rata rates. However, it is noted that the herein Claimant was also a Claimant involved in a different Claim involving a different issue for the same date as the Claim date here, which was sustained in our Award 12018. Claimant is not entitled to two payments for September 13, 1988. Thus, if Carrier has made payment under Award 12018, nothing additional is due Claimant in this Award.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.