

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(CSX Transportation, Inc. (The Chesapeake and
(Ohio Railway Company)

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 Carman George McSorley (hereinafter "claimant") when the carrier improperly worked Carman Keith Huffman on overtime on August 3, 1989.

2. That accordingly, the claimant is entitled to be compensated for four (4) hours pay at the applicable time and one-half rate for said violation.

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.

The Organization contends that Carrier violated the Agreement, specifically Rule 11, when Claimant was not called to work overtime on August 3, 1989. It maintains that Carrier was required to utilize the Overtime Call Board when making overtime assignments and this requirement was wilfully avoided when a Carrier improperly assigned the contested overtime work to another Carman. It asserts that Claimant's name was next-out on the Overtime Board Call and he was by-passed. Rule 11 is referenced, in pertinent part, as follows:

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

* * *

Understanding ... Effective July 1, 1948

(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. Overtime call board will be kept under lock and key available to view of employees. Overtime call list will be kept under lock and key and made available to employees when necessary.

(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. An employee called for work for which he is not qualified will retain his place on the call board or list.

(10) It is understood that past practice will continue with respect to calling men for overtime who are assigned to special services, such as repairs to coal elevator and power plant machinery, etc."

Carrier replies that it complied with Rule 11 since Claimant worked 417 overtime hours in 1989, and thus, as near as possible, he was accorded an equal distribution of overtime and participated fully in the opportunity to equalize overtime. It points out that during the first nine months of 1989, Carmen worked an "enormous" 132,239 overtime hours at Raceland Car Shops and Claimant certainly had the opportunity to equalize overtime if he so desired. It also notes that under Second Division Awards 2035 and 10256, the Board held that overtime be distributed as equally as possible over a reasonable period, which it observes was followed herein.

In considering this dispute, the Board concurs with the Carrier's position. There has been no showing that Claimant was denied the opportunity to work overtime during a reasonable time period and no showing that he was subject to a pattern of overtime discrimination at Raceland. Instead the

record shows he was accorded a reasonable portion of overtime and was not denied the opportunity to equalize it. Moreover, though Claimant was first out on the Overtime Board Call circa August 3, 1989, and a contention of favoritism was asserted by the Organization, there has been no showing that he did not receive a fair share of overtime as that requirement is contemplated under Rule 11. On this point, the Board held in Second Division Award 5136:

"While the fact that Claimant was first out at the time that the disputed work was given Sammons may be some evidence of favoritism, it is not sufficient in and of itself to substantiate a contention of unfair discrimination. The burden of proof in that regard rests with Petitioner and the record does not establish that over a reasonable period of time, Claimant has not received a fair share of overtime, including daytime work."

In view of these findings and the very recent decisional holdings of Second Division Awards 12291, 12292 and 12294 involving the same parties and the same basic issue, the Board, of necessity, must deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1992.