

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Carrier violated the controlling Agreement when work belonging to the Carmen's Craft (Painters) was improperly assigned to employees other than Carmen (Painters) at Coster Shops, Knoxville, Tennessee on August 17 and 18, 1990.

2. That accordingly, the Carrier be ordered to compensate Painters L. D. Carter, Social Security No. 415-78-3714, and W. K. Franklin, Social Security No. 245-94-2953, pay at the overtime rate for eighteen (18) hours to be divided equally between each. That is that they both receive pay for (9) hours at the overtime 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.

As Third Party in Interest, the American Railway and Airway Supervisors Association were advised of the pendency of this dispute but did not file a Submission with the Division.

On August 29, 1990 the Organization submitted a Claim because Foreman performed certain work of the painters' craft on the weekend.

There is no argument that the work in question is Carmen painters' work, but the Carrier advises that there were no painters available to do the work on the overtime basis. In this regard, in its October 22, 1990 response, Carrier advised that the Organization's local Representative was "...well aware

of the work requirements and our flexibility in scheduling the work. He has been requested a number of times to furnish painters for weekend overtime on any shift."

Carrier asserts that the local Representative was contacted to provide employees on the dates in question but he failed to provide any volunteers and an unsuccessful attempt was made to contact him concerning certain other shifts. Stated differently, the Carrier asserts that all painters declined the overtime, and the work was performed by others.

In further handling on the property, the Carrier insisted that all painters on the property declined. The Foreman attempted to contact all painters not on the property and he got no response from 4, 1 declination, and 2 not contacted because phone numbers were not available.

In its submission, Carrier concedes that it:

"...followed the normal procedure for assigning overtime work by notifying painter representative ...on August 15, 1990, that painters were needed for Sunday, August 19, 1990....[the representative] who arranges for the painters to work overtime, notified Carrier at 3:30 p.m., Friday, August 17, 1990 that all painters on the property declined to work the overtime painting assignments for Sunday. At this point, Carrier needed overtime work...and since no painters desired to work on Sunday, it decided to try to arrange for overtime work for third shift, August 17, 1990. Carrier then attempted to contact Painter Representative..., to arrange for the third shift overtime work; however...could not be reached. Foreman...then asked all painters on duty and attempted to contact all painters who were not on duty to ask them if they desired the third shift overtime work. All of the employees either refused the work or could not be reached."

It must be noted that the Claim does not include Sunday, August 19, 1990 but rather, it is limited to August 17 and 18, 1990.

We do not concur in the Carrier's statement that "...the Organization was unable to provide an employee willing to protect the work...", since the record indicates that a request was made concerning work on the 19th of August, not the two preceding days.

Indeed, as noted by the Carrier, "...supervision recognized the need for painters to perform the duties described in the claim." (See Page 5, Carrier's Ex Parte Submission) but we question that "...the customary arrangements were made here for the available painters to be notified of the need..." since the Representative was not asked to provide painters for August 17 and

18, and indeed, Carrier did not even attempt to contact him about that need until 3:30 PM on the very day of the work distribution to non-unit employees.

To be sure, the Organization had objected to the practice of "forced overtime". But that factor does not relieve the Carrier in this case. In its Submission, Carrier asserts that Claimant Franklin had previously informed the Foreman that he could not work clay cars, and it could not contact Claimant Carter because the painter representative "is responsible" for obtaining painters for overtime work, and thus the second shift Foreman did not have Carter's telephone number. We search the record in vain to find any such assertions made by the Carrier while the dispute was under active consideration on the property, despite the fact that Franklin and Carter's names had been contained on the Claim from the beginning.

Regardless of who may have vacillated, the fact remains that the union Representative was only asked about Sunday overtime; he was not asked to provide employees for Friday and Saturday.


We do not concur with the Carrier that this issue has been decided since we note a significant factual difference between this case and those cited by the Carrier. Here, the Carrier did not utilize the services of the union Representative concerning the shifts to be covered, and thus, an "eleventh hour" effort to obtain employees to do the painting is not sufficient.

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 30th day of September 1992.