

Parties to said dispute waived right of appearance at hearing thereon.

The claim of the Organization is that Carrier ran around Claimant to avoid double time payment. The Organization alleges that Claimant was available and wanted to work, but that the General Foreman disallowed his seniority rights when an Electrician was needed to work overtime on the 7 a.m. to 3 p.m. shift of December 11, 1993. The overtime caller was instructed in line with prior Notices not to pay any double time and to run around Claimant who would have to be paid double time, in preference to Electricians available to be paid at the time and one half rate. The Organization argues that the Carrier called and paid Sheet Metal workers the double time rate, but refused to allow proper payment to Claimant.

The Board has reviewed all the evidence of record presented by the parties to the dispute at bar. The Board's study of the Rules finds the claim turns on Rule 8 and the supporting evidence. Rule 8 states in part:

"Rule 8 Distribution of Overtime:

8-2 Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

The Board has failed to find substantial probative evidence that the Carrier's actions violated Rule 8-2. This dispute is not grounded on a seniority overtime rule in which the Claimant would have been next up by rights of seniority. This dispute is centered on a seniority equalization rule, which requires the Carrier to assure that its actions move in the direction of distributing overtime equally.

There is no evidence proffered by the Organization that would lead to the conclusion of a Carrier violation. Notices posted by the Carrier are not proof that overtime equalization was avoided in violation of the Agreement under these instant circumstances. There is no violation of Agreement Rule 8-2 in refusing to use the Claimant at double time rate in preference to an employee at the time and one half rate. That is particularly true where, as here, there is no showing that the Carrier's actions avoided the "purpose.. of distributing the overtime equally."

As the Board finds no overtime record or evidence to conclude that the Carrier violated the Agreement, the claim is denied. This conclusion is consistent with prior Board Awards (Second Division Awards 12737, 12796, 10256).

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13037
Docket No. 12971
96-2-94-2-124

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: ((St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"1. That in violation of current controlling Agreement, at the Pine Bluff Locomotive Maintenance Shop, Pine Bluff, Arkansas the St. Louis Southwestern Railway Company, denied Electrician H. D. Pearson, II, the right of overtime call in violation of Agreement, as amended by Addendum 3 of Memorandum of Understanding dated December 4, 1969, but in no way limited to Rules 4, 7, 8 and 26, when refusing to allow use of Claimant due to qualifying for double time payment.

2. That accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Electrician H. D. Pearson, II, for eight (8) hours pay at the overtime rate of double the straight time rate in effect for electricians at this location for December 11, 1993.

3. That the Carrier be ordered to cease and desist in this improper and prejudicial handling of Electrical Workers entitled for the overtime payment at the double time rate, at this location.

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 employee 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.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.