

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13135
Docket No. 12916
97-2-94-2-61

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen, Division of
(Transportation Communications International Union
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Carrier violated the intent, and purpose of Rules 3, 4, 7, & 8 of the controlling Agreement, as amended, on June 17, 1993 whenever Carman K. Maggard, Jr., was prohibited from accepting an overtime call account sixteen (16) hour work restriction imposed by the Carrier.
2. That the Carrier be ordered to recompense Carman K. Maggard, Jr., that amount of eight (8) hours, at the time and one-half Carmen rate of pay in effect on June 17, 1993.”

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.

Parties to said dispute were given due notice of hearing thereon.

On June 16, 1993, the Claimant worked the third shift at the Carrier's Cincinnati, (Queensgate) Ohio, car repair and inspection facility. He then worked the first shift at this facility on June 17, 1993. The Claimant was available to work the second shift on June 17, 1993 for which he would have been paid at the rate of time and one-half. However, supervision would not allow him to work the second shift because he had been on duty 16 consecutive hours. In the Carrier's opinion, if the Claimant was allowed to work 24 straight hours this would have constituted a safety hazard to him and his fellow employees.

The Organization contends that Carmen are not covered by the Hours of Service Act and the Carrier did not have the right to unilaterally impose restrictions on the hours they are permitted to work where the Agreement contains no such restriction. Therefore, according to the Organization, the Carrier had no right to refuse to allow the Claimant to work the second shift on June 17, 1993, for which he would have been paid overtime.

It is well established in the rail industry that a Carrier has the right to promulgate rules for the safety of its employees absent a legal or contractual proscription to the contrary. In the instant case, the governing Agreement did not prohibit the Carrier from restricting Carmen from working more than 16 consecutive hours.

Rules 3, 4 and 7, cited by the Organization in support of this claim, provide the manner in which employees are to be compensated when they work overtime. Rule 8 requires that overtime be distributed equally among employees as near as possible. However, neither of these Rules grants Carmen the contractual right to work overtime after being on duty for 16 consecutive hours.

The work restriction that the Carrier imposed on Carmen was not arbitrary, capricious or unreasonable. The Carrier concluded that allowing Carmen to work continuously for 24 hours posed a safety risk. That determination was not unfounded. Moreover, the Claimant was placed on the top of the overtime board on June 17, 1993, so that he was allowed to work the next overtime shift for which he was rested.

Form 1
Page 3

Award No. 13135
Docket No. 12916
97-2-94-2-61

The Carrier's decision to limit the number of consecutive working hours that Carmen are allowed to work did not violate any Rule in their Agreement and was not arbitrary, capricious or unreasonable. Therefore, the instant claim must be denied.

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 30th day of July 1997.