

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13238
Docket No. 13132
98-2-96-2-34

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company (hereinafter ‘Carrier’) violated the current collective bargaining agreement when they improperly assigned overtime to another carman rather than properly notifying the local committee to secure the appropriate carman for overtime.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate carmen, Raymond Delano (hereinafter ‘Claimant’) for one (1) hour pay at the overtime rate (19.80) in accordance with our current agreement.”

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 October 23, 1994, the Organization filed a claim that the Carrier violated Rule 8 of the Parties' Agreement on October 19, 1994 when it called Carman W. M. Dostie ("Dostie") for overtime to complete an air test on a rail car which has been repaired and was needed for inclusion in an outbound freight train. The work consisted of 20 minutes of overtime for Dostie.

The Organization's position is that Rule 8(b) has been violated. It reads in part:

"8(b) When it becomes necessary for employees to work overtime, the Local Official will advise the Local Committee as to the number of employees required. The Local Committee will then designate the employees to perform the work."

Rule 8 has been supplemented by the Carrier's letter of October 23, 1992, entitled Distribution of Overtime. In pertinent part that letter reads:

"At each location where Carmen are employed, an overtime list of employees will be prepared by the supervisor and the designated local committee man. When overtime is required, the supervisor will contact the local committee man and indicate to him the number of employees needed for overtime.

Based upon the overtime list of employees, the local committee man will call the appropriate employees until the number needed by the Carrier has been secured. The local committee man will notify the supervisor as to the employees who were secured for overtime as well as those who were called but not secured.

If the number of employees needed for overtime cannot be secured by the above method, the Carrier will be free to make up the difference by assigning the junior-most qualified employees to perform the overtime."

The Carrier, on the property, did not provide any reasons for its denial of the claim, except to state in its final letter, dated June 12, 1995, that Dostie worked "overtime" in order to finish an "air test." And he, therefore, "was only finishing work

already in progress” which “was caused by train service requirements. Such overtime is specifically excluded from the provisions of Rule 8.”

The Board finds this response completely without merit. The Carrier has provided no citation or other evidence that overtime is “excluded” from the provisions of Rule 8.

While the Organization has the burden to substantiate their claim, there is a shifting of this burden, when the Organization provides a specific basis for the claim, to the Carrier to state its reason for the denial. Its failure to do so is at its peril.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of March 1998.