

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13356

Docket No. 13219

99-2-96-2-129

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Carrier violated Rule 5, of our current Agreement when they unjustly denied Carman R. Priebe overtime on November (sic) 1995.**
- 2. That accordingly, CSX Transportation, Inc. be ordered to compensate Carman Priebe 6 and one half hours at time and one-half for this 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 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.

This claim involves an allegation that Claimant was improperly passed over for an overtime opportunity at Oak Yard in Dearborn, Michigan, on the November 24, 1995 holiday. Carrier maintains both a Shop Track and a Train Yard Overtime Board at this facility, and there is no dispute that Claimant was first out on the Train Yard Overtime Board at the time in issue. Carrier admitted using and exhausting the Shop Track Overtime Board, but not going to the Train Yard Overtime Board.

The record on the property establishes that Carrier asserted the following reason for not selecting Claimant for the overtime:

“Investigation reveals that an employee was needed to operate the hi-rail truck at Oak Yard on the claim date. One qualified driver was obtained from the shop track overtime board before that board was exhausted, and another was needed. You allege that the Carrier should have called the first out employee on the train yard overtime board, Claimant Priebe. However, in view of the special skills required for this work, an employee with experience on the hi-rail truck was called . . . You have not demonstrated that Mr. Priebe had the necessary experience for the job in question. . . .”

The Organization responded that Claimant had the required skills to operate the hi-rail truck, had been a Carman for almost 20 years, and had attended special classes on the inspection and repair of freight cars as well as acting as an Instructor of these skills to others.

Carrier’s conference reply form indicates that it “will advise local management that overtime needs to be equalized,” which it stated was the appropriate remedy rather than a penalty payment.

The Organization contends that Carrier’s failure to call Claimant from the Overtime Board for the work in issued violated Rule 5, Holidays - Regular Assignments - which states in pertinent part:

“(2) In the event that position cannot be filled due to absence of the regular incumbent, in line above, such positions will be filled from the overtime boards.”

The Organization notes that the Carrier never denied its assertion that the practice on the property had been to go to the Train Yard Overtime Board after the Shop Track Overtime Board is exhausted, and relies upon Second Division Awards 10253, 11666 and 12343 to support its interpretation of the proper use of overtime boards. The Organization points to Carrier's conference reply form as an admission of wrongdoing.

Carrier argues that it was not required to use the Train Yard Overtime Board for Shop Track work. It asserts that Claimant could not have worked the assignment because he did not have a CDL and was not qualified to operate a hi-rail truck. Finally, it contends that the only remedy contemplated by Rule 8 for overtime violations is granting an employee the opportunity to equalize overtime, and that there are no provisions for penalty payments for time not worked, citing Second Division Awards 4980, 5136, 10256; Third Division Award 13191.

A careful review of the record convinces the Board that the Carrier was required to exhaust the overtime boards in filling this holiday overtime position. The Carrier admitted that it did not go to the Train Yard Overtime Board after exhausting the Shop Track Overtime Board, and that its selection of the second employee did not come from an overtime board. This action violated both Rule 5(2) and the undenied practice on the property.

The Carrier argues that, even if its selection process was improper, the Claimant was not qualified for the position. While the Carrier has the right to determine the fitness and ability of an employee to perform a job, it must be able to specify the job qualifications it seeks and the reasons for rejecting an applicant if challenged. In this case, the Carrier asserted on the property that the job required special skills and that an employee with experience on the hi-rail truck was called. For the first time in its Submission to the Board, the Carrier stated that the Claimant did not possess a CDL. Because the possession of a CDL was not set forth as a clear job requirement at the time and no mention was made of whether the successful candidate possessed a CDL, the Organization was precluded from responding to the bona fides of this qualification or showing whether Claimant, in fact, met it. We find that the Organization met its burden of effectively rebutting the Carrier's assertion that the Claimant was not qualified to perform the inspection job in issue, because he had lengthy experience and training in this area and instructed others in inspection and repair.

With respect to the appropriate remedy, the Carrier cites the following language of Rule 8 - Distribution of Overtime:

“Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.”

The Organization has not responded to Carrier’s consistent argument that a violation of this type of overtime equalization Rule involves only the provision of a lost overtime opportunity for the Claimant, rather than any monetary payment. Because the Organization’s cited Awards do not indicate whether they dealt with a similar overtime distribution Rule, we conclude that the Organization failed to sustain its burden of proving that a monetary remedy is appropriate. We direct that the Claimant be afforded the opportunity to make up the lost overtime assignment in issue.

AWARD

Claim sustained in accordance with the Findings.

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 20th day of January 1999.