

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13768
Docket No. 13592
03-2-00-2-72

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2 when they arbitrarily assigned a Machinist to perform work that is historically and contractually recognized as Carman's work.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Mark E. Lawrence in the amount of two hours and forty minutes (2.7) pay at the overtime rate. This is the amount he would have earned had the Carrier properly assigned this work.”

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.

The dispute in this case concerns a September 24, 1999 assignment of Machinist C. Batchelder to the Paint Shop to make and cut stencils from 1100 to 1300 hours. At the time of the disputed assignment, Carman/Painter F. Curtis was assigned to other duties and the Claimant (also a Carman/Painter whose hours were 0700 to 1500) was on vacation. The Carrier defends the assignment on the ground that the work performed by Machinist Batchelder was incidental to his Machinist's work.

Rule 2.1(k) of the Carmen's Agreement states that Carmen will "[p]aint cars, locomotives and components including stenciling." By the clear terms of Rule 2.1(k), stenciling work in the Paint Shop is therefore Carmen's work.

In Second Division Award 13731, the Board found that the Carrier did not demonstrate facts to show how the work performed by the Machinists and claimed by the Carmen (there, blowing of grit from locomotives) was incidental to the Machinists' work. See also, Second Division Award 13570 which also involved assignment of stenciling work to a Machinist ("... the Carrier did not refute the Organization's assertion that the stenciling involved was the total work assignment, or show what other work assignment the stenciling was incidental to"). The same logic holds for the work in dispute in this case. The Carrier has not shown facts for the Board to conclude that the stenciling work performed by Machinist Batchelder was incidental to his Machinist's work. On that basis, the claim has merit.

With respect to the remedy, relying upon Rule 17.9 ("... [i]f for any reason work is performed by an employee during vacation, it will be paid for at the applicable overtime rate in addition to the vacation pay"), the Organization seeks overtime for the Claimant who was on vacation. Citing Third Division Award 31790 ("... employees who are on vacation are unavailable to perform overtime work"), the Carrier argues that the Claimant is not entitled to compensation because he was unavailable. The Organization responds that although on vacation, the Claimant "... was available, qualified and willing to perform service for the Carrier on the above noted date."

Under the structure of the language in Rule 17.9, neither party is correct on the remedy. By the existence of the precise language in Rule 17.9 which provides for overtime payment for work performed on vacation, the parties contemplated that work performed during a vacation period would be compensated at the overtime rate. Therefore, the rationale of Third Division Award 31790 relied upon by the Carrier which states that employees are not available for overtime during their vacations cannot apply in this case. However, on the other hand, a condition for overtime payment under Rule 17.9 is that "work is performed." Here, because he was not assigned the work, the Claimant lost a work opportunity. However, to be compensated at the overtime rate during vacation, Rule 17.9 specifically provides that work must actually be performed. The Claimant did not perform the work. Because the parties contemplated overtime payment on vacation only if "work is performed," we must find that loss of a work opportunity during a vacation period must be compensated only at the straight time rate. Had the parties intended otherwise, one would expect to see such language in the Rule.

The claim shall therefore be sustained, but only at the straight time rate.

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 24th day of October 2003.