

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14010
Docket No. 13888
10-2-NRAB-00002-090001**

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

**(Brotherhood Railway Carmen Division of TCU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Employees’:

- 1. That the Springfield Terminal Railway Company violated the terms of our current Agreement in particular Rule 29.2 and 29.5 when they arbitrarily ordered or otherwise allowed Carman Brian Bertleson to work overtime on passenger cars 100 and 101 performing an air test instead of allowing Carman Timothy Locke to perform this work.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Timothy Locke in the amount of four (4) hours at the overtime rate of pay. This is the amount of compensation he would be entitled to had the Carrier not violated the 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 5, 2007, the Carrier instructed Carman B. Bertleson to remain on overtime to perform air tests on Business Train Passenger Cars 100 and 101 at the Waterville, Maine Yard.

It is the Organization's position that the Carrier violated Rules 29.2 and 29.5, which covers the distribution of overtime, when it failed to call the Claimant and instead allowed Bertleson to perform the air tests, which took approximately four hours to complete. It argues that the Claimant was fully qualified for the work and ahead of Bertleson on the overtime board, which the Superintendent - Mechanical Department - East admitted in his declination letter dated December 21, 2007. Therefore, it further argues that is conclusive proof that the Carrier violated the Agreement. Additionally, it relies upon Second Division Award 13238 involving the same parties as settling the issue in its favor and it requested that the claim be sustained as presented.

It is the position of the Carrier that it did not violate the Agreement. It argued that it has a past history of dedicating an employee to perform work on the passenger cars. Bertleson was assigned that work and, on the day in question, he had been working on those cars. As a continuation of his work, he was asked to perform the air tests, because the Carrier had a deadline to prepare the cars for an executive train trip. It argues that this assignment of work complies with Rules 29.1 and 29.4 of the Agreement because the overtime was incidental to his position. It further argues that the Carrier could not have reasonably anticipated that this task would take more than two hours to complete and it was practical to have Bertleson perform the air tests in order to maintain consistency with the preparation of those cars. It concluded that there is no basis for sustaining the instant claim.

After reviewing the record, the Board understands the special circumstances involved in the preparation of the Business Train Passenger Cars and the practicality of allowing Carman Bertleson to continue with that task. Nonetheless, it is clear that in this instance there was a reasonable expectation that the work would exceed two hours. Therefore, the Board finds and holds that because the work

exceeded incidental overtime, the Claimant shall be compensated two hours at the straight time rate of pay.

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 14th day of January 2010.