

Award No. 1987
Docket No. MC-1512-98
2-UP-I-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

BERT A. PETRIE—MACHINIST

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: This claim is based upon that part of Rule 11 of the Schedules of Rules Governing the Working Conditions of Machinists, Boilermakers, Blacksmiths, Sheet Metal Workers and Molders, Electrical Workers, Carmen, and their Helpers and Apprentices, and Coach Cleaners represented by System Federation No. 105, Railway Employees' Department, A. F. of L., Mechanical Section No. 1 thereof, said Schedules being those which became effective November 1, 1934, May 1, 1948, and September 1, 1949. The part of said Rule 11 upon which this claim is based remained the same in each of those Schedules and provided:

"Records will be kept of overtime worked and shall be available to committees with a purpose in view of distributing overtime equally."

Because of the failure and refusal of the Union Pacific Railroad Company to grant me overtime work from on or about September 1, 1947, to the present time in violation of Rule 11 of the collective bargaining agreements described above, I claim:

First: compensation in an amount equal to the average amount of overtime compensation paid to other employees of the Union Pacific Railroad Company who were employed as machinists in the passenger roundhouse at Cheyenne, Wyoming, and received overtime compensation under the equal-distribution of overtime provision of said Rule 11 from on or about September 1, 1947, to the date the company commences to grant me an equal share of all overtime work under Rule 11, together with interest thereon computed at 6% per annum at the end of each calendar year. The exact amount to be paid to me under this claim can be computed by the company from its payroll records since under the provisions of Rule 11 the company has been required to maintain a record of all overtime worked.

Second: I claim an equal share in all future overtime work under Rule 11 of said Schedules of Rules.

EMPLOYEE'S STATEMENT OF FACTS: The facts, as I believe them to be, are set forth in part in my affidavit which is submitted herewith and identified as Exhibit D and is hereby incorporated herein by reference. The facts relating to the amount of overtime, if any, which I worked under Rule 11 as compared to the amount of overtime worked by my fellow employees

D. The Claim Is Barred.

The effective agreement between the carrier and the shop crafts organizations provides at Rule 35 that:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representative, **within ten days.**" (Emphasis supplied.)

There is no record of protest ever being made by Claimant Petrie with any of the carrier's supervisory force prior to the receipt of Petrie's letter dated January 28, 1954, which was addressed to Foreman Baker. It was urged by Petrie that the—

"Company has known of the denial of overtime work to me and, despite repeated protests which I have made to responsible representatives of the Company."

This is not a fact and the carrier has no record or knowledge of any of its supervisory force having received either written or oral protest from Petrie concerning the handling of overtime at the Cheyenne Shops prior to his letter of January 28, 1954. Petrie was advised of this fact in Mr. Neuhart's letter of June 8, 1954.

Since Petrie did not "within ten days" protest the handling of overtime at the Cheyenne Shops and handle his case within the meaning of the first sentence of Rule 35, this claim is barred and must be denied.

We have shown in the foregoing that the claim here presented is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

A hearing was afforded the parties on April 27, 1955, at which hearing the claimant, Bert A. Petrie, by his attorney, David J. Clarke, and the carrier, Union Pacific Railroad Company, appeared and argued their respective positions. Both parties also filed extensive briefs.

This dispute centers on the interpretation and application of Rule 11 of the controlling agreement which contains the provision that "Record shall be kept of overtime work and shall be available to committees with a purpose in view of distributing overtime equally." Claimant asserts that under this provision he is "guaranteed" the same amount of overtime worked by other employes at the Cheyenne passenger roundhouse and lays claim for an amount "equal to the average amount of overtime compensation paid to other * * * machinists in (carrier's) passenger roundhouse at Cheyenne, Wyoming." Responding to this contention, carrier asserts that such a "guarantee" is not supported by any reasonable interpretation of this portion of Rule 11.

It is not necessary to decide this precise question. For the purposes of an award here, it is only necessary to point out that the quoted portion of

Rule 11 cannot in any event be reasonably construed as requiring or guaranteeing the assignment of overtime work to employees not available to perform it when such work is required.

It was established at the hearing that claimants assigned position was one on which overtime work, in the form of working beyond regular shift hours, does not normally occur. He was employed on the last trick at the roundhouse in Cheyenne, Wyoming, which terminates when the first trick starts. Since the largest number of men at the roundhouse are employed on the first trick there is seldom any occasion to hold employees over from the last trick, since their work is taken over by a much larger force regularly assigned to the oncoming shift.

Under such circumstances, extra work on days off would supply the principal opportunity for assignment of overtime to last trick employees. However, claimant's work week was from Monday through Friday, and it was developed at the hearing that as soon as he was through work on Saturday morning he would leave town to go to his home in Denver, Colorado, and would not return until early Monday evening. Claimant therefore was not available for calls to extra work, and no other method has been suggested by which he might reasonably have been provided with a greater amount of overtime work to compensate for the alleged scarcity of overtime on his last trick assignment.

In such a situation we must find that claimant has failed to sustain his burden of proving that the claim is meritorious; certainly on the basis of the record of this case, including evidence developed at the oral hearing, we cannot find any sound basis on which he might be entitled to an amount of overtime equal to the average assigned to other employees at the Cheyenne roundhouse. In making this finding we intimate no conclusion either way as to whether, even if a violation of the agreement were shown, the claim as stated is proper.

The record before us does establish that he received an appreciable amount of overtime. It further appears that there was no regular or scheduled assignment of overtime in the Cheyenne roundhouse during the period involved here, and that the only overtime worked was that necessary to meet emergency conditions and to complete work in progress on locomotives needed for service which could not be finished during regularly assigned hours. Under these circumstances, claimant's last trick assignment, together with his unavailability for extra work on his days off, would normally preclude his receiving the same amount of overtime as that received by employees working on other tricks, where overtime occurred more frequently, and those who were available for the extra work.

In view of the foregoing, it is unnecessary to discuss other contentions raised by carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September, 1955.