

Award No. 2040
Docket No. 1870
2-CB&Q-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Electrician T. A. Rush was improperly denied the right to work overtime performing work on the Brass Foundry Crane on December 6, 1952.

2. That accordingly the Carrier be ordered to compensate Electrician T. A. Rush in the amount of 12 hours at the time and one-half rate for December 6, 1952.

EMPLOYEES' STATEMENT OF FACTS: On Saturday, December 6, 1952, the carrier required an electrician to work overtime on the Brass Foundry crane at Aurora which could not be performed during regular working hours of Monday through Friday.

The committee was contacted to furnish the name of the electrician first out off the overtime list.

The committee furnished the name of Electrician T. A. Rush, hereinafter referred to as the claimant, as the electrician first out for overtime, which is confirmed by Mr. Angier's letter of June 15, 1954, a copy of which is submitted herewith and identified as Exhibit A.

The carrier failed to assign the claimant and instead assigned Electrician A. T. Walt to repair the crane on Saturday, December 6, 1952, compensating him at the overtime rate for such service.

In the handling of the property, the carrier set forth certain facts which are erroneous, as reflected in Exhibit A, and such erroneous facts were made known to the carrier in letter of July 18, 1954 directed to the undersigned by Local Chairman J. J. Reding, a copy of which is submitted herewith and identified as Exhibit B. The carrier did not take exception to anything contained in exhibit B on the property.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

3. The decision as to who is competent for overtime work is one made solely by management under the controlling agreement.

4. There was no violation of the contract when Electrician Walt was used to repair the brass foundry crane on December 6, 1952.

5. The carrier subsequently distributed the opportunities for overtime work among the electricians at Aurora, and twice offered claimant overtime work which he refused.

In view of the above, this claim must 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 employes 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.

The claimant was not used to perform overtime work on the Brass Foundry Crane on December 6, 1952. Claimant headed the list of those employes on the overtime list.

The carrier did not use the claimant on the date in question because it considered that the claimant had done a poor job when he had worked on the crane September 30, 1952.

The carrier further asserts that the rule providing for distribution of overtime was not violated inasmuch as the claimant was given the opportunity to equalize his overtime on subsequent dates.

This case proposes two questions:

1. Was claimant competent to perform the work in question?
2. If claimant was competent to perform the work in question, was carrier bound to use him for the work because he headed the overtime list?

As to question No. 1, the record is in direct conflict regarding the question of fact of competency. Clearly, the need for answering question No. 2 would cease to exist if we were able to conclude from the record that claimant was not competent.

Assuming that claimant was competent to perform the work in question, was the carrier bound to use him because he headed the overtime list? We believe not.

It is our opinion that the "Distribution of Overtime" rule was not violated even if the claimant's competency was not questioned. Under the terms of the rule, the carrier is bound only to distribute overtime work on an equal basis. The rule does not restrict the distribution to a first in-first out basis. We believe that the rule should be considered as being properly observed if the work is distributed equally over a reasonable period of time. This gives the employes an equitable distribution of the overtime work at increased rates, yet gives management some degree of latitude in selecting

an employe for the work to be done. Such is not in violation of the agreement as written and which was in effect on December 6, 1952.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.