Award No. 3391
Docket No. 3142
2-PL&E-TWUOA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L.—C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY and THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

On Saturday, April 27 and Sunday, April 28, 1957 the Car Shop at McKees Rocks, Pa. worked. There is a crew of employes that work these days but more employes were needed for these two (2) days.

The Organization at the present time does not have an Overtime Agreement at this point. For this reason the Organization takes the stand that since there is no overtime agreement at McKees Rocks, Pa., covering Carmen or Helpers that the oldest employes are entitled to the overtime.

The following employes are the employes who should have been used on Saturday April 27 and Sunday April 28, 1957: J. Jumba, J. Fyczok, J. Fillipovitz, J. Morris, J. Schmidt, J. Dubash, J. Palfy, W. Yanicki, R. Pastino, J. Duggan, F. Midinka, M. Repitski, W. Bezila, F. Lodo, H. Keener, A. Fillip, T. Dobrowolski, P. Joseck, F. Bobchak, R. Garrand, G. Kovach, P. Becker, F. Langman, F. Leja, J. Torick, J. Pigoni, J. Jasionowski, J. Schaukovitch, all Carmen. G. Fritz, N. Galloy, J. Koenig, J. Hoffer, H. Hunter, R. Hufnagel, H. Mayes, C. Haggerty, W. Jackson, J. Lemic, Y. Yost, G. Adamcki, J. Spece, J. B. Magnolli, A. Reiss, A. Koenig, G. Fox, W. Carroll, all Helpers.

Since these employes were not used but junior employes worked in their places, the Organization is requesting the Carrier to compensate all these employes eight (8) hours for each day at the punitive rate of pay because it was the sixth and seventh day.

This is being requested due to past practice used at McKees Rocks, Pa., and similar claims have been paid at this point.

EMPLOYES' STATEMENT OF FACTS: At the time of this case there was no overtime agreement. This means that for that reason this case was presented to the carrier.

That the employes mentioned above were the senior employes and should have been called for the Saturday and Sunday work.

That the employes mentioned above were either carmen or helpers and were available for the work on Saturday and Sunday.

That at McKees Rocks, Pa., when there was any overtime it has always been the practice to call the oldest employes to perform this work as there was no overtime agreement at this point.

That claims of this same type have been handled on the property of the carrier and were paid by the carrier which proves that the oldest employes are entitled to the overtime work since there was no overtime agreement. Employes' Exhibits No. 1 and 2.

That this dispute arose at McKees Rocks, Pa., and is known as Case M-142.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering Carmen, their Helpers and Apprentices, (Car & Locomotive Departments), copy of which is on file with the Board and is by reference hereto made a part of these statements of facts.

POSITION OF EMPLOYES: That in the past it has always been the practice to call the oldest employes when overtime was involved as there was no overtime agreement.

That since there was no overtime agreement that the past practice used at McKees Rocks, Pa., is as good as any rule in the agreement.

That since the employes mentioned above were the senior employes and were not called for the Saturday and Sunday work but junior employes were used, that the senior employes be compensated as asked for in their original claim.

That the same type of claims have been paid by the carrier which proves that the carrier agreed with the organization that since there was no overtime agreement that the oldest men are entitled to the overtime.

That when the carrier paid prior claim the carrier agreed that a past practice was as good as a rule in the agreement.

CONCLUSION

The organization submitted the case to Mr. J. A. Brose, master mechanic-car under date of May 10, 1957. Employes' Exhibit No. 3.

"* * * The claimant seeks payment for the work lost at the overtime rate apparently on the theory that if he had been called for the work it would have been done at that rate by virtue of the fact that the claimed dates were his rest days. While there is some differences in the awards of this Division upon this point, the better reasoning would seem to support those decisions allowing simply the pro-rata rate. The overtime rule has no application to time not worked. See Awards 1771, 1772, 1782, 1799 and 1825, Second Division. * * *"

When a similar issue was before the Third Division, the Board said in Award 3193:

"* * * In the absence of Agreement to the contrary, the general rule is that the right to work is not the equivalent of work performed so far as the overtime rule is concerned. The overtime rule itself is consonant with this theory when it provided that 'time in excess of eight (8) hours exclusive of meal period on any day will be considered overtime'. The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently time not actually worked cannot be treated at overtime rate unless the Agreement specifically provides. This conclusion is supported by this Division Awards 2346, 2695, 3049. * * *"

This same conclusion is also supported by the following Third Division Awards: 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073 and 4196.

CONCLUSION

The carrier has conclusively shown that the overtime worked on Saturday, April 27, 1957 and Sunday, April 28, 1957, was assigned in accordance with the long established and accepted practice governing the distribution of overtime in the McKees Rocks Shops. The employes have failed to cite any rule that was violated and, in fact, admit that there was no rule in the agreement to govern the distribution of overtime at the time the instant claim arose.

The carrier respectfully submits the claim 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 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.

Parties to said dispute were given due notice of hearing thereon.

At the time the subject dispute arose there was no agreement provision governing the distribution of overtime work, except with respect to holiday overtime — which is not involved in the instant case. The weight of the evidence indicates it had been the practice at McKees Rocks to use employes regularly assigned at a particular shop or facility to perform the overtime

work arising there, even though senior employes regularly assigned at another shop or facility at that location and in the same seniority district were available to perform such work.

The named claimants were regularly assigned at the "KS" Shop, while the subject Saturday and Sunday overtime work arose at the "Y" Shop. Therefore no contract violation occurred because employes regularly assigned at the "Y" Shop but junior to the claimants were used to perform the overtime work in question instead of the claimants being assigned to do this work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1960.