Award No. 3771
Docket No. 3652
2-SOU-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling agreements the Carrier improperly denied Machinist M. R. Oden pay for ten and one-half (10½) hours at the time and one-half time rate on Friday, October 10, 1958.

2. That accordingly, the Carrier be ordered to properly apply the agreements and compensate Machinist M. R. Oden for the aforesaid ten and one-half (10½) hours at the time and one-half time rate.

EMPLOYES' STATEMENT OF FACTS: M. R. Oden, hereinafter referred to as the claimant, is employed by the Southern Railway Company, hereinafter referred to as the carrier, as a machinist at the Atlanta, Georgia shops with a seniority date of July 13, 1936.

At the carriers' Atlanta, Georgia shops a "Road Trip Board" is kept. This board is composed of the names of machinists, who under the controlling agreements are eligible, who indicate that they will make themselves available for work on line of roads.

On Friday, October 10, 1958, the claimant's name appeared as first out on the road trip board. The claimant was on duty at the Atlanta, Georgia shops and was as available as could possibly be.

During the tour of duty of the claimant, Supervisor W. R. Johnson received a message that diesel-electric locomotive unit No. 2116 was in trouble at Hiram, Georgia. Without giving any consideration to the rules of the agreements, Supervisor Johnson assigned Machinist W. R. Copeland to the road trip with the result that Copeland made ten and one-half (10½) hours overtime. It will be shown in the position of employes' that Machinist Copeland was not eligible under the agreements to participate in road trips.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

While the usual procedure may be to operate a rotary overtime board, nothing in Rule 36 precludes the carrier from varying from such procedure as long as the intent of Rule 36 is not violated.

It has not been shown that the claimants in the instant case have been damaged by the actions of the carrier. The rule in question, by its very wording, allows considerable latitude in assigning overtime as long as the carrier distributes the overtime as equally as possible.

It is our understanding, from the reading of the rule, that the intention of the rule was to see to it that employes should be given an equitable distribution in overtime earnings. If a rotary board should be used exclusively such would probably result in inequitable variances over a period of time. The rule, in providing for a review of the overtime record by the committee, gives the organization a means of determining if the overtime is being as equally distributed as possible."

The evidence is therefore conclusive that Rule 11 does **not** provide that road service or overtime at any shop must be assigned on a day-to-day or rotary basis or that such work be divided or prorated between employes at two shops. All it does is provide that overtime **at each shop** be distributed (prorated) "as equally as possible consistent with forty (40) hour week rules." It is thus evident that there is no basis for the claim and demand which the International Association of Machinists here attempts to assert, and that they are unsupported by the agreement in evidence. In these circumstances, the Board cannot do other than make a denial award.

All evidence here submitted in support of carrier's position is known to employe representatives.

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.

W. R. Copeland, a machinist in the Diesel-Electric Locomotive Repair Shop, or roundhouse department, was called for emergency road work on a diesel unit recently repaired and serviced in his department but operating unsatisfactorily. He readily located the cause, an excess of oil in the crankcase.

Claimant Oden is a machinist in the Motor Shop or Electric Shop, in the machine shop department, and was at the top of a Road Trip Board composed of machinists who list themselves as willing to do road work. The Road Trip Board is not mentioned in the Rules, and the record does not show what its application has been in past practice.

The claim is that Machinist Copeland's use in this emergency road service in his own department violated the following provision of Rule 11:

"Roundhouse or other employes regularly receiving the benefit of holiday service shall not be considered in proration of road service or overtime in other departments. This shall not prevent their being called for such service when other employes are not available."

While the applicable part of the provision is that "roundhouse * * * employes * * * shall not be considered in proration of road service or overtime in other departments," the claim assumes it to mean that such employes shall not be so used if other employes are available.

On that assumption Copeland's emergency road service was no violation, since it was admittedly in his own department. The phrase 'in other departments" clearly applies to road service as well as overtime. Grammatically the provision cannot be broken up so that the phrase applies to overtime and not to road service. Such an intention could easily have been expressed by the requisite punctuation and wording.

The speculation that the parties might nevertheless have had such an intent is inconsistent with the whole spirit of the Rules, which tend to protect each employe's right to his own chosen line of work. This is true of the seniority rules. It is also true of Rule 6, which provides that holiday service shall be pro-rated by departments. That rule expressly provides that running repair work shall be pro-rated "among qualified roundhouse forces". It even provides that machine work shall be pro-rated "among men assigned to similar machines on assigned work days." Like Rule 11 it provides that men may be brought in from other departments if necessary; but except in such emergencies it protects each employe's right to his own kind of work.

The same intent is implicit in Rule 10, which relates to "an employe regularly assigned to work at a shop or enginehouse, (etc.) when called for emergency road work." Neither that Rule nor any other in the Agreement even suggests that such an employe is barred from work in his own department in emergencies, when experienced specialized service is especially required if available. The Carrier is charged with the duty of efficient operation, and in the Rules the Organization has expressed its concern with each man's right to his own chosen work. Under these circumstances it is not reasonable to presume that either the Carrier or the Organization intended by Rule 11 to forbid a roundhouse employe to perform emergency road service in his own department merely because a machinist from another department is available. The presumption is entirely otherwise.

It is therefore unnecessary to consider what rights may have accrued to Claimant by reason of his position on the Road Trip Board.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3771

Rule 11 of the effective agreement reads in part as follows::

> "Roundhouse or other employes regularly receiving the benefit of holiday service shall not be considered in proration of road service or overtime in other departments. This shall not prevent their being called for such service when other employes are not available."

Pursuant to the above rule a "Road Trip Board" was established between the parties to this agreement.

The Claimant was first out on the "Road Trip Board" and available for road service. Machinist Copeland was employed in the roundhouse and was not entitled to be listed on the "Road Trip Board" so was ineligible for road work per Rule 11.

Section 2, Seventh of the Railway Labor Act reads:

> "No carrier, its officers or agents shall change rates of pay, **rules or working conditions** of its employes as a class embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

The evidence of record does not show that any change was made in the effective agreement in the manner prescribed in the agreement or in accordance with Section 6 of the Railway Labor Act, hence, this Board is required to enforce the existing working conditions embodied in the agreement in accordance with Section 2, First of the Railway Labor Act.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink