

Award No. 4321
Docket No. 4094
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood 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 EMPLOYEES:

Claim is herewith presented in behalf of Carmen A. Rasile and J. Rozzi for: "Four and one-half hours at time and one-half rate for September 23, 1960." On September 23, 1960 five members of the Struthers wreck train crew were called for overtime work and were used between the hours of 3:00 P. M. and 7:30 P. M. It is submitted that the claimants are senior to the employes called on Sept. 23, 1960 and therefore should have been called in lieu of the junior men used. There is no overtime agreement covering the members of the wrecking crew as such. Rule 27 of the Carmen's Agreement permits you to use a sufficient number of regularly assigned members of the crew. However in doing so the principle of seniority must be observed.

EMPLOYEES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-143.

A. Rasile and J. Rozzi are regular assigned wreck crew members by bid and award. They are required to cover wreck crew assignments seven (7) days a week and twenty-four (24) hours per day. This includes their rest days.

The work hours of the wreck crew members are 6:30 A. M. to 3:00 P. M. They work in the car shop when not out on a wreck.

On the day in question (Sept. 23, 1960) the wreck crew members were taken out of the shop after their working hours (3:00 P. M.) and used on overtime work.

Since A. Rasile and J. Rozzi are the senior men on the wreck crew they should have been called for the work before any junior men were used.

Rule 27 of the present agreement was violated.

AWARD 3410: “* * * The proper rate of compensation for work not performed is the pro rata rate.”

AWARD 3444: “* * * The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate.”

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board.

CONCLUSION: The Carrier has conclusively shown that the work performed on September 23, 1960, was assigned in accordance with the long established and accepted practice. The Organization has failed to cite any rule that had been violated by the carrier and, in fact, admitted that there is no rule in the agreement to govern the distribution of overtime covering the members of the wrecking crew as such.

Awards of various Divisions of the National Railroad Adjustment Board have been cited in support of carrier's position in this case.

The Carrier respectfully submits that 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.

The facts presented in this claim are in nowise materially different from those dealt with in Second Division Award 3096 which involved the same parties. In that case, the overtime work was done by five junior employes who were taken from a certain shop where they were assigned and working on running repairs and where, likewise employed, were the two senior employes who filed claim, as here, because they had not been used in said overtime work which was performed during their rest day.

In the present case, the overtime work was performed by five carmen members of the wrecking crew, junior to Claimants who were also members of the wrecking crew but who, because it was their rest day, were not on duty when the five junior carmen finished their regular shift at the Car Shop and were alerted to accompany the wreck derrick and the Wreckmaster for some pipe reloading work at a point about an hour's travel away.

In Award 3096 this Board held:

“We conclude from the evidence presented that there has been no rule violation shown, and that as regards past practice, the evidence in favor of the carrier outweighs the claims paid in wreck crew situations presented by the organization.”

Again in Award 3391, also involving the same parties, where, as in the present case, the organization had stated that there was no overtime agreement covering the situation there in question, we find this Board holding to like effect both as to past practice and as to there being no rule violation.

From a careful study of the argument presented by the parties and detailed analysis of the awards they have cited as authority, we conclude that both the weight of authority and past practice leave us no alternative but to deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1963.