Award No. 4519

Docket No. 4444

2-CRI&P-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the terms of the controlling agreement the Carrier improperly called Machinist E. Waymire for overtime work on the third shift Sunday, December 31, 1961.

2. That accordingly, the Carrier be ordered to compensate Machinist R. E. Pulliam in the same amount as was paid Machinist E. Waymire or four (4) hours at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Co. hereinafter referred to as the carrier maintains a diesel locomotive repair shop at Armourdale, Kansas.

On Sunday night December 31, 1961, diesel engines No. 676 and 404 arrived at Armourdale each with a defective steam generator. The regular force of machinists employed on the third shift were all assigned to perform work necessary for the operation of train movements, which made it necessary to call a machinist on overtime to repair the two defective steam generators.

Machinist R. E. Pulliam, hereinafter referred to as the claimant, is regularly assigned to the third shift but was not working on December 31, because of that day being one of his regular assigned rest days.

Machinist E. Waymire, who is regularly employed on the first shift was arbitrarily called in on overtime by the carrier to repair the two steam generators.

At Armourdale, the employes have an overtime board setup in accordance with the provisions of the controlling agreement, which is divided into three (3) sections, one (1) for each of the three shifts. Claimant stood first out on the third shift overtime board.

categorically denies, and the claimant was damaged, which the carrier categorically denies, the board has consistently held that the proper payment for time not worked is at pro rata rate.

The foregoing clearly establishes that this claim is entirely without merit. It has been proven the interpretation the organization seeks to place on the rule cannot be supported. It has not been refuted that overtime still could be equalized which is the purpose and intent of the rule. Instead the organization is seeking to establish a practice requiring "meticulous compliance" with a "precise formula" which the board has said is not to be found in such a rule. The claimant was in no way damaged and there is no penalty provision in the agreement. This claim 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 waived right of appearance at hearing thereon.

The resolution of this claim devolves upon the proper interpretation of Rule 10 of the Agreement which in its relevant portion states:

> " * * * Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. The distribution of overtime will be handled by the local committee of the craft."

The Division must determine whether the language of the Rule means that overtime work must be assigned by the local union committee rather than the Carrier and secondly whether overtime work must be regularly distributed through a rotary board or whether it must be merely distributed as equally as possible under the given circumstances.

Upon review of the entire record, the Division does not find tenable the Petitioner's position that the Rule means that the Carrier is obligated to advise the local union committee of the need for overtime work when the occasion arises and that in turn the local committee will call the appropriate employe for the overtime work. This position is untenable because the language simply does not prescribe such a course of action or vest such authority in the local committee. The language is far more easily susceptible to the construction that the local committee will keep the records of the overtime worked in order to insure that the members of the craft will be treated equally and fairly in the distribution of available overtime work. But this is not the same as holding the Rule requires that, in every circumstance, the first man out on the overtime board must be given the first available overtime assignment at the direction of the union committee.

Both the United States Railroad Administration and this Division have refused to interpret the Rule in the manner suggested by the Petitioner. This Division is of course aware that the Petitioner vigorously contends that the Awards of this Division cited by the Carrier are not in point because the

Rule that was interpreted in the cited cases contained different language, i.e., the Rule in the Carrier-cited cases specifically provided that overtime work "shall be distributed as equally as possible" but that there is no such limitation contained in the Rule under consideration. The Organization contends that the Rule presently being considered is directly derived from a nationally negotiated rule, i.e., Rule 11, and is a "pure" rather than a "bastardized" rule.

But even giving full weight to the Petitioner's contention that Rule 10 here under consideration is a "pure" rule and is not circumscribed by the words of limitation "as equally as possible" the definitive interpretation given to "pure" Rule 11 does not uphold and support the Petitioner's position. The United States Railroad Administration held that the purpose of Rule 11 was to insure that employes would be called for overtime as equally as possible, but it did not mean that the employes would be called for overtime in strict rotation. (See letter dated January 31, 1920 from Frank M'Manamy to Federal Manager of International & Great Northern Railroad; see letter dated January 20, 1920 from M'Manamy to Federal Manager of Missouri, Kansas and Texas Railroad and letter dated January 21, 1920 from M'Manamy to Federal Manager of New York, New Haven & Hartford Railroad cited on pages 51-52 of the Official Interpretations of the Rules of the National Agreement Between the United States Railroad Administration and the Employes Represented by the Railway Employes' Department, AFL).

The Division finds that it is quite evident that even in construing a rule which does not contain words of limitation "as equally as possible" that the parties did not intend to create a rotary board and that the local union committee was only vested with the general authority to review the overtime records to insure that over a given period of time employes were treated fairly and equitably with regard to available overtime work.

In the interest of consistent and uniform interpretation of similar if not identical overtime-work distribution rules, the Division has no recourse but to deny the instant claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1964.

LABOR MEMBERS DISSENT TO AWARD 4519

The referee applied an absurd and strained meaning to Rule 10 when he stated:

> "The Division finds that it is quite evident that even in construing a rule **which does not contain words of limitation** "as equally as possible" that the parties did not intend to create a rotary board and that the **local union committee was only vested with the general authority to review the overtime** records to insure that over a given period of time employes were treated fairly and equitably with regard to available overtime work."

By the foregoing they admit the rule does not contain limitations, but then go on to limit the rule by interpretation.

Rule 10 clearly and unambiguously states, in pertinent part:

> "Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. The distribution of overtime will be handled by the local committee of the craft."

The majority has gone beyond the authority of this division "that is to write new rules or meanings to rules" by bad interpretation which does violence to the employes, the agreement and the legislative intent of adjusting disputes.

The specific and clear language governing here warrants a sustaining award.

Therefore, we are compelled to dissent.

R. E. Stenzinger

E. J. McDermott

C. E. Bagwell

T. E. Losey

James B. Zink