Award No. 4574
Docket No. 4337
2-C&O-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region and Hocking Division)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement, particularly Rule 27½ when it utilized and worked Carman Wayne Potter overtime beyond regularly assigned working hours of the shift.

2. That accordingly the Carrier be ordered to compensate Carmen P. E. McKenzie two (2) hours August 17, E. Collier two (2) hours August 18, J. P. Rayburn two and one-half (2½) hours August 19, and Redford Dingess two and one-half (2½) hours August 25, 1961, at the carmen time and one-half applicable rate of pay for said violation.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, maintains and operates a repair track and transportation yards at Ashland, Kentucky. Carmen employes for which claim is made, hereinafter referred to as claimants, held regular assignments at Ashland, Ky., and claimants names appeared first out on the carmen overtime board on dates for which claims are made. On said dates Carman Wayne Potter who was a furloughed carman at Ashland, Kentucky was called in the absence of the regularly assigned employe and worked on said dates for which claims are made. At the close of the assigned shift, the carrier had work which could not be performed by the regular force. Carman Potter was utilized and worked 2 hours on August 17 and 18, 1961, and 2½ hours on August 19 and 25, 1961 even though he was not working a regular assigned position.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier all of whom have declined to make satisfactory adjustment.

The agreement effective July 1, 1921 as subsequently amended is controlling.

It has been clearly shown by the Carrier:

1. There has been no violation of Rule 27½ or Note No. 1 thereto.

2. The use of Potter to fill a vacation vacancy was proper under the rule and he was worked beyond the regular quitting time in the same manner the regular employe he was relieving would have been worked had he not been on vacation.

3. The force of carmen was not augmented or increased on the dates for which claim was made.

4. Potter was not used to perform "extra work".

5. The employes have acknowledged carrier's application of the rule both by acceptance of carrier's decision in similar grievances handled on the property and by acknowledging, without exception thereto, the principle here involved when submitting a case concerning another issue to your Board.

For these reasons carrier urges that a denial award be issued.

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.

Rule 27½ of the controlling agreement reads in pertinent part as follows:

"1. The Carrier shall have the right to use furloughed employes to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employes have signified in the manner provided in paragraph 2 hereof their desire to be so used * * *.

Note 1: In the application of this rule to employes who are represented by the organizations affiliated with the Railway Employes Department, A. F. of L., it shall not apply to extra work * * *."

This rule is a verbatim incorporation into the controlling agreement of Article IV of the August 21, 1954 National Agreement.

Carman Potter was a furloughed employe of Carrier at Ashland, Ky., and had properly signified his desire to be used under Rule 27½. He was called in the absence of regularly assigned employes, and on August 17 and 18, 1961 he worked two additional hours overtime. On August 19 and 25, 1961, he worked two and one-half additional hours overtime. All such overtime was after the normal quitting time of the force on duty.

Claimants are regularly assigned Carmen at Carrier's Ashland facilities and their names appeared first out on the overtime board on the dates in question.

It is the position of the Organization that the additional hours which Potter worked were not spent in filling a regular position, but consisted of "extra work", bringing Note 1 of Rule 27½ (supra) into play. As a result, the Organization contends that this overtime could not properly be worked by Potter, under the Rule and Note 1, and that Claimants were entitled to it.

The Carrier maintains that since the regular incumbent of the position would have properly been held and paid for the overtime had he not been on vacation, then his relief (Potter) was also properly held and paid.

The question to be determined is whether the overtime which accrues after the regular quitting time of a furloughed employe working under Rule 27½ is "extra work" within the meaning of Note 1 to the Rule.

This is a dispute of first impression before this Division, and we look to the Rule and its wording to ascertain its purpose and intent.

There is an obvious distinction between the meaning of relief work and extra work as used in the Rule. This is apparent at a glance, and is accentuated by the Note which we are here considering.

There is no question that during the regular shift hours, Potter was performing relief work within the meaning of the Rule. In so doing, he took the burdens as well as the benefits which accrued to the position as he occupied it. If the position pays a differential, if he is sent home after two hours, or if he is held on overtime, these factors are part of his relief assignment.

Extra work has a meaning which seems to be well understood by both employers and employes in the railroad industry. It consists of work which by definition entails an augmentation of the regular work force.

We are unable to conclude that overtime which accrues to a furloughed employe working under Rule 27½ is "extra work" within the meaning of the Rule or Note 1 to the Rule.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.