Award No. 4902
Docket No. 4813
2-L&N-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Agreement was violated when men assigned to the engine carpenter miscellaneous overtime board were not permitted to work the required overtime on January 25 and 26, 1964, and

2. Accordingly, the Louisville and Nashville Railroad should be ordered to additionally compensate engine carpenters who were entitled to work from the Overtime Board on those dates, at punitive rate of pay, as follows:

H. B. Walls—January 25, twelve (12) hours.
L. L. Dorsett—January 25 and 26, twelve (12) hours each days.
J. P. Gooch—January 25 and 26, eight (8) hours each day.
J. M. Hicks—January 25 and 26, twelve (12) hours each day.
L. L. Lay—January 25 and 26, twelve (12) hours each day.
F. E. Seifried—January 25, twelve (12) hours—January 26, eight (8) hours.
G. F. Walls—January 25 and 26, eight (8) hours each day.
J. H. Stillwell—January 25 and 26, eight (8) hours each day.

EMPLOYES' STATEMENT OF FACTS: The Louisville and Nashville Railroad, hereinafter referred to as the carrier, maintains a force of engine carpenters (carmen) in shop no. 1, Louisville, Kentucky, all of whom are assigned to the first shift, 7 A.M. to 3:30 P.M. (30 minutes lunch period without pay) Monday through Friday. In addition, carrier maintains a three shift operation of engine carpenters, 7 days per week, in the diesel shop at Louisville. All of these men in both shops work within the boundaries of what is commonly referred to as South Louisville shops. Further, they are all carried on the came seniority roster, with bidding rights in both shop no. 1 and the diesel shop, and all engine carpenters in both shops who have applied for overtime are assigned to the same overtime board. In other words, if a man lays off in the diesel shop or if overtime work is required in that shop for other purposes, the first available engine carpenter on the miscellaneous overtime board is called to

Employes state the second difference between the handling in 1951 and in 1964 was, in 1951 all employes including those on the overtime board were worked.

There is no evidence to show that any employes, other than those assigned to the locomotive department, worked the extended hours or the extra days (Saturdays) in 1951. To have worked other employes at the same time, alongside the locomotive department employes on extended assignment, was not called for by the overtime agreement, and there has been no evidence produced to show that such additional employes were ever worked under such conditions.

In carrier's letter of July 7, 1964, to the general chairman, it was stated:

> While it is my understanding that we have not taken advantage of the provisions of this rule for sometime, we are enclosing copy of bulletins covering a similar situation at our South Louisville Shop during the months of 1951. At that time no protest was taken because of the handling given, the reason therefore apparently being the fact that representatives of the employes at that time felt there was no violation of the agreement.

To summarize this case, it should be noted that:

1. There is a binding agreement involved which has been approved by federal court order which outlines in no uncertain way, how overtime work **must** be allocated to carrier's employes.

2. This controlling agreement has been followed implicitly, for almost twenty years in which time there has been no previous question of the way overtime work **must** be handled in conformity with the interpretation agreement of April 18, 1946. This agreement is the result of a federal court order and both parties have been strictly enjoined from making any change in the court approved method of handling.

Another thing which carrier must call to this board's attention is the fact that all employes for which claim was made worked full time on their regular jobs as well as their portion of any overtime work to which they were entitled in other departments, by virtue of their positions on the overtime board.

It would have been a direct violation of the agreement, and would have been considered as a contempt of court for carrier to have assigned the employes to the work for which claim is made, in lieu of the employes who are regularly assigned to the heavy diesel repair department.

In conclusion, carrier submits that it has shown there is no basis for the claim, and therefore, respectfully requests that it 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.

Claims are predicated upon the allegation that Carrier violated the effective Agreement between the parties, when it did not permit employes assigned to the engine carpenter miscellaneous overtime board to perform work required overtime on January 25 and 26, 1964, with compensation requested at the punitive rate of pay. Such claimant employes are covered under Carman Agreement with Carrier, in the territory referred to as South Louisville Shops. Claim dates are listed as January 25 and 26, 1964. It is further contended that Carrier maintains a force of engine carpenters (Carmen) in Shop No. 1, Louisville, in addition a force of engine carpenters (Carmen) in its Diesel Shop at Louisville. Both Shop No. 1 and the Diesel Shop comprise the South Louisville Shops. Employes in both shops are carried on the same seniority roster and have bidding rights to both shops, and employes of both shops applying for overtime service are assigned to the same overtime board. Rule No. 12(b), effective April 18, 1946, is relied upon by the Organization to support its contention here. Note exception in this rule applying to South Louisville Shops.

Carrier contends that because an emergency situation was created, due to a large number of diesel locomotives being out of service, it was necessary to assign heavy repair forces to work in excess of their regular 40 hours per week jobs. Such employes were placed on 7 day 12 hour assignments January 24, 1964. Carrier states that before extending the change in hours of assignment, the Organization was advised of the proposed changes in view of the overtime agreement.

The Board is of the opinion that Carrier had the right to assign employes in the Diesel Department to work in excess of their 40 hour week positions. See Par. 11 of the interpretation and application of Rule 11—Agreement effective April 18, 1946, as follows;

> "When any department or sub-department is placed on an assignment in excess of eight hours, the employes assigned to that department or sub-department will be assigned overtime. Time so worked will not be accounted for on the overtime board."

In view of the provisions of Special Agreement, executed by all the parties operating through System Federation No. 91, we find that the claims here are without merit and should be denied.

AWARD

Claims denied per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1966.

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