

Award No. 4961

Docket No. 4862

2-C&EI-CM-'66

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. 20, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago & Eastern Illinois Railroad deliberately and knowingly violated the controlling agreement when they denied Carman H. C. Lucas and Carman R. V. Lowe their right to work Saturday, September 28, 1963, Sunday, September 29, 1963, and 5½ hours on Monday, September 30, 1963.

2. That accordingly, the Chicago & Eastern Illinois Railroad be ordered to compensate the carmen named in part one (1) hereinabove, 8 hours each at the punitive rate for Saturday, September 28, 1963; 8 hours each at the punitive rate for Sunday, September 29, 1963, and 5½ hours each at the punitive rate for Monday, September 30, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and Eastern Illinois Railroad, hereinafter called the carrier, maintains a large car shop facility at Danville, Illinois, at which point the carrier keeps an overtime board where employees who desire overtime work, list their name. The two carmen named in part 1 of the claim were first out on the overtime board. When there is overtime work, the carrier does not have to go through the whole seniority roster and call each man to see if he wants to work overtime. The foreman merely checks the overtime board, sees who is listed as the next in line to be called, and calls them in the order listed.

On Friday, September 27, 1963, at 2:00 P.M. in the afternoon, Mr. William Blanton, carman, and vice chairman of the local committee at Danville, was called in to Mr. Hughes' office, the general car foreman, and told that carmen would be needed for overtime work both Saturday and Sunday. This was at least one and one-half hours before quitting time of the claimants that the carrier knew there would be overtime work for carmen.

Entitlement to perform service is dependent upon the availability of he who claims his services should have been utilized. As set forth in Carrier's Statement of Facts, there was insufficient time to contact all the employees necessary to perform the work in question prior to quitting time on September 27, 1963. Claimant Lowe had left the carrier's premises before Mr. Hughes had an opportunity to contact him. Mr. Lowe did not have a telephone in his home; therefore, carrier had no alternative but to consider him unavailable.

In summary, the record is void of any evidence of an unequal distribution of overtime work in contravention of the provisions of Rule 6 of the agreement, Claimant Lucas did not have a contractual right to share the work in question and carrier was unable to contact Claimant Lowe because he did not have a telephone in his home. He was, therefore, unavailable.

The instant claim is void of merit and should, therefore, be declined. We respectfully request the Board to so hold.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claim is that Rule 6 was violated when carmen employed elsewhere than at the car shop at Danville were called for overtime instead of the Claimants, who were next in line on the overtime board.

Rule 6 provides as follows:

"Overtime will be distributed as equally as possible between the men of such craft or trade at each shop, engine house, repair track or inspection point, except that in emergency cases where the employees of any department are unable to take care of any necessary overtime, employees of other departments may be used."

There is no provision in the Rules for overtime boards, but such boards are maintained on which employees desiring overtime list their names. Although the Claimants were not called for this overtime work on September 28, 29 and 30 they apparently submitted a regular time claim on October 9 which was denied on October 28 in a letter stating:

"In as much as you performed no work on this car your claim is denied."

This is challenged by the Employees as an insufficient denial under Article V of the National Agreement of August 21, 1954. We find nothing in the applicable agreements specifying requirements for the denial of time claims submitted; but in any event the fact that time was not worked is obviously a sufficient reason for denying an ordinary time claim. Whether the Claim-

ants should have been called for the overtime work was an entirely different matter which was thereafter on November 20, 1963, presented on Claimants' behalf by the local chairman pursuant to Discipline and Grievance Rule 30.

The record indicates that this claim was denied on December 16 by a letter stating in part as follows:

"Your letter also states that these men had made themselves available for overtime work and were not used, whereas men who had not requested the overtime used.

Due to the emergency nature and also the type of work required, it was necessary to use some of the men who had previously equipped an identical car approximately one year ago.

In view of the above reasons and Rule 6, which states, in part, 'Overtime will be distributed as equally as possible between men of such craft or trade at each shop', I must decline your claim."

On appeal it was further stated as follows:

"I submit that the overtime work has been distributed as equally as possible. Further, as I informed you during our conference, Mr. Engel was notified to equip Car C&EI 5406 with special fixtures for transporting automotive transmissions late in the afternoon on Friday, September 27, 1963, at which time it was requested that the car be ready for disposition on the following Monday."

During the handling on the property other reasons were given for denial of the claim which need not be considered.

The record indicates that at about 3:00 P. M., near the close of the shift on Friday, the general car foreman was directed to equip a freight car with special fixtures required for the transportation of automotive transmissions, which was required for the following Monday. As indicated in the initial denial this rush job was considered to necessitate the use of some men who had previously installed similar equipment. Seven carmen were used, and performed eight hours work on Saturday, the same on Sunday, and 5½ on Monday to complete the work. Under the circumstances it would appear that the Carrier was justified under Rule 6 in using carmen experienced in this particular work, even though they came from another department.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1966.

Keenan Printing Co., Chicago, Ill.

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