

Award No. 4980

Docket No. 4908

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen J. L. Landis, J. H. Boone, M. S. Heath and O. L. Haughwout were unjustly dealt with and their service right violated when not called for overtime service on May 4, 1964; in compliance with Rule 11.

2. That accordingly, the Carrier be ordered to compensate Carmen J. L. Landis, J. H. Boone, M. S. Heath and O. L. Haughwout eight (8) hours each, at the carman applicable time and one-half (1½) rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: Carmen J. L. Landis, J. H. Boone, M. S. Heath and O. L. Haughwout hereinafter referred to as the claimants, are regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its yards at Newport News, Virginia where a large number of carmen are employed holding seniority as such, under the provisions of Rule 31, of the shop crafts agreement with a work week Monday through Friday, rest days Saturday and Sunday.

On Wednesday, April 29, 1964, a derailment occurred on the main line east of Harpersville Road Crossing at Newport News, Virginia.

In this derailment was a covered hopper car SAL 7232, for which derailment wrecking crew was called from Newport News and used intermittently from time of arrival at the location of derailment, until the afternoon of Friday, May 1, 1964; at which time they were relieved. However, the wrecking crew was again dispatched to the scene of said derailment for further clean up work on Monday, May 4, 1964. The loaded car referred to above was placed on the carrier's repair yard between the hours of 11:00 P. M. and 12:00 midnight on May 4th. Carrier's foreman, T. W. Morris knew approxi-

argue that an employe should be released before completing the job and an employe low in overtime hours called out in order to equalize the overtime worked. Such argument is without support in the agreement rules as well as the rule of common sense.

In view of the foregoing, carrier submits that the following conclusions are in order:

- (1) Rule 7(c) does not apply to wrecking service, such employes being paid under Rule 10.
- (2) Even if Rule 7(c) did apply to wrecking service, it would not be applicable in this case, as the overtime in question was continuous after regular working hours and was not on a "call" basis.
- (3) Even if Rule 7(c) were applicable in this case, there would have been no violation of the rule as the employes held on duty were required to do only such work as called for.
- (4) Even if the wrong employes had been used from 12:00 midnight to 7:00 A.M., on the date in question, others on the overtime board would have no claim as their relief would be their standing on the overtime board since no employe has preference to any particular overtime work in an equalizing arrangement.
- (5) Claimants were given opportunity to equalize their overtime at a later date.
- (6) There is no rule which requires the Carrier to relieve an employe on overtime and call another employe to finish the job, as the claim alleges.

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.

Petitioner contends that Carrier violated Rules 7(c) and 11 when it gave members of a wreck crew, instead of Claimants, overtime work on car SAL 7232.

The overtime in question resulted from a derailment that occurred on April 29, 1964. Car SAL 7232 was one of the cars derailed. For a few days little work was performed on SAL 7232 since it was not urgently needed. Late Sunday evening, May 3, however, Carrier was advised by a customer that the car was needed promptly to meet a shipping deadline in Norfolk on May 5. Retracking of the car was completed at about 3 P.M. May 4 and

it then was moved to the "wheelspot" at 11:30 P.M. that night for permanent repairs. The five members of the wreck crew, all of whom are carmen, were asked to remain on duty to perform the necessary work and all but one accepted. Two additional carmen were called from the overtime board to effect body repairs on the car. The wreck crew employees, who had been on overtime since 3:30 P.M., continued to work from Midnight until 7 A.M.

Petitioner maintains that the wreck crew should have been relieved at Midnight and the Claimants called on an overtime basis at that time. Rule 7(c) is not helpful to Claimants in that regard. It exists for the protection of the employees who were called out and was intended to deter Carrier from overworking them. Here the wreck crew worked on a continuing and urgent mission to get SAL 7232 to Norfolk on May 5 and Rule 7(c) provides no proper foundation for complaint by Claimants.

Rule 11 is expressly concerned with distribution of overtime and in Understanding (4) provides as follows:

"There will be, as near as possible, an equal distribution between employees who voluntarily sign the overtime call lists."

This provision allows Carrier some latitude in assigning overtime and does not require that such distribution be on a day to day or first-in first-out basis (see Awards 2035 and 2040) or in accordance with any precise formula (Award 2123). We agree with the awards cited above that Rule 11 should be considered as being properly observed if overtime is distributed substantially equally over a reasonable period of time.

Accordingly, it is not a violation of Rule 11 that Carrier did not assign the overtime on SAL 7232 that was required to be performed on May 5. There is no indication in the record that future assignments will not equalize Claimants' overtime with others. That members of wreck crews will from time to time have more overtime than other employees is realistic. The abuse of Rule 11 would be for Carrier then to fail to equalize overtime among all eligible employees over a reasonable period. Petitioner's remedy would be to bring a claim based on a reasonable period of time rather than a specific job or group of jobs.

The claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.

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