



Award No. 5196

Docket No. 4885

2-C&O-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYES:

1. The current agreement was violated particularly Rule 11, when on January 24, 1964 Carman R. F. Thomas was not called for overtime in compliance with Rule 11, paragraphs c, 3 and 4.

2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to additionally compensate Carman Thomas in the amount of two (2) hours and fifty-five (55) minutes for January 24, 1964; the freight car inspector applicable time and one-half rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman R. E. Thomas, hereinafter referred to as the Claimant, is regularly employed as such by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, in its Russell Terminal, Russell, Kentucky, regular assignment second shift, 3:00 P. M. to 11:00 P. M. with rest days Tuesday and Wednesday.

When the Carrier elected to work the Coal Hump overtime instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic, L. S. Fidler's letter of May 4, 1964; addressed to Local Chairman, G. C. Watkins he states, "There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal." However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours.

Attached as Exhibit A is a letter from Local Chairman, Watkins addressed to: "Whom it may concern" in which he copied two letter one addressed to Mr. F. R. Lutz Russell, Kentucky dated June 23, 1963; other addressed to C. E. Powell, Russell, Kentucky dated March 12, 1964.

the agreements. Among them are: Awards 1638, 2722 and 3672 of this Division; Awards 6758, 8251 and 15865 of the First Division; and 7212 and 8527 of the Third Division."

The Organization's claim in behalf of Carman Thomas is without merit and should be denied.

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

An oral hearing before the Board is not requested unless Employees should request such hearing in which event Carrier should have advance notice thereof.

(Exhibits not reproduced.)

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.

Claim of R. E. Thomas, Carman — 2 hours, 55 minutes' pay for January 24, 1964, as freight car inspector at time and one-half rate.

According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding. On a two (2) shift operation it is anticipated that the hump will be worked until 1 A. M. or less than 2½ hours beyond 11:00 P. M. the quitting time for the 2nd shift.

The Organization claims that the claimant stood first on the Overtime Board on January 24, 1964, for overtime work on the afternoon of January 24, 1964, and that the Carrier violated the intent of Rule 11-C in not calling the claimant for overtime work.

It has been the practice for several years that when less than two and one-half hours' overtime was necessary or worked, the car inspector was continued on duty; and when more than two and one-half hours' overtime was worked, a man from the Overtime Board was called.

The claimant actually worked on the second shift from 3:00 P. M. to 11:00 P. M. He did not work any overtime.

The Organization denied that there was such an agreement, but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours.

The Organization states that the claimant should have been called for overtime work but since he was not so called, he should be paid time and a half for two hours and 55 minutes. The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly, the Carrier did not violate the agreement by not assigning overtime work which was not needed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employees' Statement of Facts reads as follows:

"When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964; addressed to Local Chairman G. C. Watkins he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employees' Statement of Facts quoted above it will be noted that it was the carrier who denied that there was any such an agreement. In the findings of the majority quoted below they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the

manner in which Carman would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's Position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Car-men's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P. M., his quitting time and left; then state that the carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly the Carrier did not violate the agreement by not assigning overtime work which was not needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we therefore likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger