

Award No. 6311

Docket No. 6188

2-C&O-FO-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES:

1— That under the current agreement Phillip D. King was unjustly dealt with and his service rights violated when he was not called from the overtime board in compliance with Rule 13B of the Agreement between the Chesapeake and Ohio Railway Company and the International Brotherhood of Firemen & Oilers.

2— That accordingly the Carrier be ordered to compensate Phillip D. King eight (8) hours at the applicable time and one half (1½) rate for November 13, 1970.

EMPLOYEES' STATEMENT OF FACTS: Phillip D. King, hereinafter referred to as the Claimant, is employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, in its Mechanical Department at Shelby, Kentucky, Big Sandy Division, as an Engine Supplyman on the second shift with a work week of Wednesday through Sunday, rest days Monday and Tuesday.

On November 13, 1970 it was necessary to call one employee from the overtime board and the Claimant, who was first out, was denied this opportunity and Raymond Coggins called by Supervisor R. L. Lowe. At Shelby, Kentucky an overtime board is established in line with Rule 13B of the Agreement which provides for the calling of employees for overtime by rotation, employees overtime hours being distributed equally.

On November 13, 1970 the Claimant instigated a claim for eight hours pay at the time and one-half rate for being called around on the overtime board.

This dispute was handled on the property in accordance with the Agreement with all Carrier officers authorized to handle grievances and declined. The Agreement effective September 30, 1938 and subsequently amended is controlling.

(7) That the claim of the Employees is without merit and should be declined.

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.

1. Raymond Coggins and Phillip D. King both had the same job classification, but Raymond also served as a cook. Both were equally qualified to do the work involved in this matter.

2. Raymond Coggins necessarily got substantial overtime because of his duties as a cook, and this duty is not disputed by either party.

3. Awards 2035 and 2040 are correct and right but the conclusion does not fit the facts of this case.

4. Rule 13b should be interpreted to mean that the Carrier should make such adjustments and has enough latitude to equalize the overtime of the employees equally as possible, over a reasonable period of time.

5. It is evident from the record that Raymond Coggins is a superlative cook. There is no dispute over the fact that, as a regularly assigned cook to the wrecking crew, Raymond Coggins will necessarily get considerable overtime work, in excess of what a person without the cook assignment would get.

6. There was a differential of 75 hours in the amount of overtime Mr. Coggins had in comparison to Mr. King.

7. Rule 13b states that its purpose is the distribution of overtime work equally.

8. The carrier was not distributing the work equally for overtime in this case. The rule should not be interpreted as absolutely proscribing the carrier from variances, but the record here shows that, if something is not done at once to equalize the time, Mr. King would never be equal to Mr. Coggins. Variances subsequent to this grievance have no probative value here.

9. If a grievance is well taken, the claimant should be made whole. To make the claimant whole, he should be paid what he would have been paid if he had done the work. In this case it would be at the time and one-half rate.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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