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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6394  
Docket No. 6201  
2-PT-CM-'72

The Second Division consisted of the regular members and  
in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: ( System Federation No. 18, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Portland Terminal Company

Dispute: Claim of Employees:

1. That the Portland Terminal Company violated the provisions of the current agreement, namely Rule No. 8 on the following dates: July 5 and 15, 1970, and September 18, 1970.
2. That, accordingly, The Portland Terminal Company additionally compensate the following available off-duty carmen at the Carmen's punitive rate of pay for said violation:

July 5, 1970 - C. A. Potter, three (3) hours pay

July 15, 1970 - K. A. Stimson, two (2) hours and forty (40) minutes.

September 18, 1970 - K. A. Stimson, three (3) hours and ten (10) minutes.

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 Petitioner charges a violation of Rule 8, of the controlling Agreement, which Rule endeavors to provide means to equalize overtime between employees, and avers that claimants were deprived of overtime work opportunities and earnings stemming therefrom on three occasions.

A careful reading of the record reveals that the dispute can be narrowed down to two statements. The Organization in its rebuttal, states:

"The...statement submitted by the Carrier is true wherein the Carrier states that it has always been the duty of the wreckmaster to be gang leader at all derailments; however, prior to July 5, 1970, the date that the first claim was initiated, acted in the capacity of wreckmaster. He supervised and directed the Carmen engaged in the rerailling operation only. He was not allowed to perform any duties of a Carman, unless he was selected from the overtime list in accordance with Rule 8 (b) of the Current Agreement. It has always been a Carrier policy to have the Wreckmaster at the scene of all derailments for this heretofore quoted purpose. However, on July 5, 1970, and thereafter, the Carrier took it on their own to arbitrarily change this long established practice, that they initiated themselves, and called one less Carman from the overtime call list, under Rule No. 8 and ordered the Wreckmaster R. E. Palmer to not only supervise and direct the operation, as was the procedure in the past, but to work with the Carman or Carmen called and actually do the duties that are required during a rerailling operation..."

The Carrier asserts that "...it has always been the duty of the Wreckmaster (a member of the Carmen Unit) to be Gang Leader at all derailments, major and minor, within or without yard limits, during assigned or outside his hours and on his rest days and holidays...and whenever at a derailment performs any class of Carmen's work for which qualified. "If only one Carman is needed, he would be the man."

Petitioner does not question the right of the Carrier to call out the Wreckmaster for a rerailling job at times other than his regularly assigned hours. This obviously is an accepted exception to Rule 8 (b). Nor does the Petitioner object to the Wreckmaster's performing any and all Carmen duties at a derailment which occurs during his regularly assigned hours. The crux of its discontent is the Wreckmaster's performing other than supervisory functions when on overtime unless he had been chosen to work overtime by the Local Committee.

It is fundamental in the determination of the meaning and intent of contract provisions that we ascertain the manner in which the parties have operated thereunder. We have accepted fact that without protest by the Organization, the Carrier called out the Wreckmaster for all derailments during and outside his assigned hours without referring to the Local Committee. We have a dispute as to whether when called to work outside his regular hours, he performed Carmen duties as well as directed the operation.

Two well established concepts pervade most of our Awards on related problems. First, it is the function of Management to determine the size of the work force it requires to perform a specific job. Second, it is incumbent upon the complaining party to establish with probative evidence that the breach of the agreement, its intent and meaning, had occurred.

If, as the Carrier states, there existed a practice whereby the Wreckmaster, properly called out for a derailment, performed all duties in connection with the rerailling, this was the accepted understanding of the application of Rule 8 with reference to this category of Carmen at the property. Saying that this was not so, does not make it not so! and Petitioner did not, in the record before us,

port its contention in this regard, with more than an allegation. We are unable to resolve a question of fact with that which was afforded us and therefore must hold that the Petitioner failed to support the claim of a violation of Rule 8 as such Rule was adhered to and applied by the parties with reference to Wreckmaster's functions at a derailment at any time.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October, 1972.