

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Southern Pacific Transportation Company
((Pacific Lines)

Dispute: Claim of Employees:

1. That the Carrier violated Rule 10 of the current controlling Agreement when Machinists T. P. Silva, E. Pieracci, J. C. Giusti, A. G. Nauyocks and L. H. Rexwinkle (hereinafter referred to as Claimants) were denied four (4) hours compensation at the straight time rate on March 28, 1971 for reporting to work and not being used.
2. That, accordingly, the Carrier be ordered to compensate each Claimant four (4) hours pay at the straight time rate for March 28, 1971.

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 waived right of appearance at hearing thereon.

Five Claimants, by and through the Organization, contend that Carrier violated Rule 10 of the Agreement*/ in that they were called for overtime work but not used. The reason for not using the Claimants was that after they had reported for work it was discovered that they would be performing service on their seventh consecutive work day requiring payment at the double time rate.

*/ "Rule 10. Employees required to report for work, and reporting, but not used, will be paid a minimum of four (4) hours at straight time rate."

The record shows that for several years, Carrier had delegated the responsibility of calling men for overtime work to the Organization's local committee.

Carrier denied the claims contending that during February of 1970 Carrier issued orders to the local committeemen**/ at Roseville not to call employees on their second rest days under circumstances that would involve double time compensation, and that those instructions were violated by the Organization's own local committeemen not chargeable to Carrier.

Carrier further contends that since the Organization denies the existence of those instructions, such denial creates "a factual impasse upon which this Board is powerless to base any finding other than dismissal of the claim."

An analysis of the unique circumstances of this dispute compels the conclusion that the claims should be sustained. When Carrier, for whatever reason, designated the local committee to act on Carrier's behalf, that local committee became Carrier's agent for the purpose of selecting employees for overtime work.

If, as Carrier contends, the local committee violated its instructions, then the local committee had no actual authority, it had the apparent authority to make the selections it did as far as the five Claimants were concerned. There is nothing in this record to show that the Claimants were put on notice that the local committee did not have the authority to do what it did. Contrary to Carrier's contention, such action by its agent was chargeable to Carrier.

Having so determined, it is unnecessary to consider whether there was a "factual impasse" as to the Carrier's instructions to its agent.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of February, 1974.

**/ The Record indicates that the local committeemen in February 1970 were not the same as those involved in this dispute.