

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 8 of the controlling agreement and Article V of the Agreement of April 24, 1970, when they arbitrarily denied Carman A. Zatopek his right to overtime on his second rest day, February 12, 1973.
2. That accordingly, the Missouri Pacific Railroad Company, be ordered to compensate Carman Zatopek in the amount of eight hours (8') at double time rate for February 12, 1973, and in addition to the money amounts claimed herein, Carman Zatopek shall be paid an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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.

The facts out of which this claim arose are not in dispute. Claimant is employed as a first trick Car Inspector in Carrier's Settegast Yard, Houston, Texas with work week of Tuesday through Saturday and rest days of Sunday and Monday. On Sunday, February 11, 1973 Claimant was called as first out on the train yard overtime board, performed service and was paid the time and one-half rate for working on his regularly assigned rest day. On Monday, February 13, 1973 claimant was again listed as first out on the train yard overtime board and stood to be paid double time under Article V of the April 24, 1970 Agreement, if he performed service on that day, the second rest day of his assignment. The record

shows that the Train Yard Foreman on Monday February 12, 1973 went to the train yard overtime board for a car inspector but passed over claimant, notwithstanding his first-out status, in order to avoid paying claimant double time. The foreman thereupon called all other employees on the train yard overtime board and none of these employees accepted the call. Thereupon, without calling Claimant, the Train Yard Foreman moved to another overtime board maintained for repair track and called an employee from that board who performed the service on Monday, February 12, 1973. On the basis of the foregoing, the claimant asserts a violation of Rule 8(b) of the controlling agreement and Article V of the Agreement of April 24, 1970.

The cited agreements read in pertinent part as follows:

"(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

* * *

"ARTICLE V - OVERTIME RATE OF PAY

All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof.

The foregoing provision is effective April 24, 1970."

It is noted that the cited Rule 8(b) does not by express language establish a procedure for distribution of overtime. The record indicates and the parties stipulated in our hearing, that various procedures have by mutual agreement and practice become accepted at the several locations to which the agreement applies. Specifically, at Settegast Yard, since 1951 to the present, separate overtime boards are maintained for train yard and repair track employees. By mutual agreement these overtime boards are managed by the local committee and the man with the least amount of overtime hours is listed as first out for calls by Carrier. The record further shows that by long and established practice employees for train yard overtime are called from the train yard overtime board and for repair track overtime are called from the repair track overtime board.

Under this mutually accepted procedure, the repair track overtime board is used to call employees for train yard overtime only after the train yard board is exhausted.

Carrier denies the alleged violation primarily upon the ground that it has a managerial prerogative to affect cost reduction and efficiency by assigning forces in the most economical manner. Moreover Carrier correctly observes that absolute equalization of overtime is not contemplated by the parties, nor does the express language of Rule 8(b) require a FIFO distribution of overtime in a particular instance. Notwithstanding the validity of the foregoing general propositions, however, we conclude that Carrier's reliance thereon in denying the instant claim is erroneous.

It cannot be gainsaid the Carrier has a general prerogative to schedule work and allocate forces in the interest of efficiency and economy. But this right may be limited by Agreement rules, including long established, mutually accepted and consistent practice adopted pursuant to such rules. It is well established on this record that past practice of over 20 years standing required Carrier to exhaust the train yard overtime board before calling from the repair track board for train yard work. The uncontroverted record shows that the foreman called every employee on the train yard board except claimant and then, without calling claimant, turned to the repair track board and called an employee therefrom to perform train yard work. (Emphasis added) We hold that the foreman did not exhaust the train yard board before calling from the repair track board and, accordingly, violated the mutually accepted practice developed by the parties at Settegast Yard pursuant to Rule 8(b).

We shall sustain the claim to the extent of eight (8) hours at the applicable straight time rate. We are not persuaded on this record to depart from our practice of allowing compensation for work not performed only at straight rates; nor do we find herein adequate support for the claim of interest at 6 per cent per annum.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of March, 1975.