

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the current Agreement, particularly Rule 8, Memorandum of Agreement No. 29 (Rev.) and Appendix "K" of the controlling Agreement when they failed to properly call Duluth Carman G. Flatt from the proper shift's overtime call list on June 22, 1973.
2. That accordingly the Carrier be ordered to compensate Carman G. Flatt in the amount of fourteen (14) hours at the pro rata rate for his class for June 22, 1973.

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.

This dispute is identical to that in Award 6891 involving the same parties and issue. In this dispute, however, the Carrier raises the issue of an emergency causing the overtime. We note that no evidence was offered by Carrier in substantiation of the existence of the emergency; the assertion of emergency is an affirmative defense placing the burden of proof on Carrier. Carrier failed to meet its burden of proof in this aspect of its defense (see Award 5484).

We note that the parties, as in Award 6891, diverge radically on the question of appropriate remedy. We also note that normally in overtime situations wherein the opportunity for such work is lost, no pecuniary loss is suffered by Claimants, if overtime is distributed relatively equally over a reasonable period of time. In the case before

us (and its companion). since the overtime was assigned to an employee on a different overtime board, the work was irretrievably lost and a monetary payment is appropriate. Hence, as in Award 6891 and in Award 6843, for the reasons indicated in both of those cases, we shall sustain the Claim but Claimant will receive pro rata pay only.

A W A R D

Claim sustained; Claimant will be compensated at the straight time rate.

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 31st day of July, 1975.