Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8104
SECOND DIVISION Docket No. 7917
2-MP-CM-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 8, overtime board, and understanding reached with System Federation No. 2 when Forty (40) Hour Work Week Agreement was negotiated.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman W. E. Fischer in the amount of eight (8) hours at the punative rate for Saturday, January 29, 1977 account his being deprived of working in line with his standing on the overtime board, Dupo, Illinois.

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 giving rise to this dispute are uncontroverted and straightforward. On Saturday, January 29, 1977, Carman W. A. Leyerly, assigned to the 8 a.m. to 4 p.m. shift, laid off for one day. His assignment was as a car inspector in the Carrier's "C & D yards".

On the same day, Carman F. E. Johnson was assigned to the Carrier's "Big Rip" Repair Tracks in the same seniority area, with work hours of 7 a.m. to 3:30 p.m. Johnson worked these hours as part of his regular five-day week, but was assigned on this day to work in the "C & D yards" owing to Leyerle's absence. It is the Organization's contention that, instead of this action, the Carrier should have called Carman W. E. Fischer, who was first on the overtime board, to replace Leyerle.

As a procedural matter, the Carrier charges that the claim has been materially changed in its progression to the Board in that the Organization has changed its rules reference to support its argument. The Board does not agree that the Organization's claim is so altered as to bar it from consideration. At issue throughout is whether rules applying to overtime and an alleged "understanding" have been violated in reference to the Claimant's rights.

Rules 3 and 4 are overtime pay rules and do not in any way determine who shall be called to work overtime and under what conditions. Rule 8 specifies the means of distributing overtime work among employes and protects employes who work overtime against layoff during regular hours to equalize the time, and reads as follows:

"DISTRIBUTION OF OVERTIME

(a) When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time.

(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairman will, upon request, be furnished with record."

Rules 3, 4, and 8 govern what happens when overtime is worked. They do not address to whether overtime shall be worked and thus have no bearing on the present claim.

The Organization relies on an "agreed to practice" as outlined in a June 7, 1951, letter from the General Chairman addressed "To All Local Chairmen" as requiring the use of an employe from the overtime board where there is a "vacancy" not in excess of three days. The Carrier properly points out that this letter is not acknowledged or agreed to by the Carrier and thus is not a mutually binding document.

Both the Carrier and the Organization refer to previous correspondence in other overtime matters and to numerous other claims and awards. Without referring to these in detail, the Board notes the significant limitations of the present dispute, distinguishing it from most other referenced disputes. This claim does not involve:

1. The use of a furloughed employe.

2. The upgrading of an employe.

3. The use of an employe on a less than five-day schedule.

4. The movement of an employe from one shift to another.

5. The use of an employe out of his seniority classification or area.

What is involved is the use of a Carman for duties in the train yard when he is principally assigned to the repair tracks. The bulletin covering this position states that place of assignment shall be "Big Rip Tracks and elsewhere as needed". No showing is made by the Organization that "as needed" excludes, by rule or practice, work in the train yards.

Nor has the Organization shown -- by rule, mutually written understanding or practice -- that the Carrier may not organize its work force in the manner it did in this instance. In sum, the Board finds that the use of a Carman "as needed" in the train yard does not constitute any infringement on overtime rights secured by the Organization. The situation here is that no employe was used off his regular shift or out of his classification, and no overtime pay was earned. The fact that an employe was absent does not convert this routine adjustment of working force to an Agreement violation.

A W A R D

Claim denied.

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 27th day of September, 1979.