

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

Parties to Dispute:

{ Sheet Metal Workers' International Association
{
{
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That under the provisions of the current agreement Sheet Metal Workers, R. Bauman, J. Land, S. Osborne, S. Scolastica, A. Hardwick, D. Barry, J. M. McShane, A. Droho, were unjustly dealt with and the terms of the agreement were violated when the Carrier refused to assign the above their rightful turn of overtime on July 1, 9, 15, 22 and August 5 and 12, 1978.
2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers, R. Bauman, J. Land, S. Osborne, S. Scolastica, A. Hardwick, D. Barry, J. M. McShane, and A. Droho for 60 hours at the time and one half rate for this occurred violation on the specified dates.

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.

The issue in this case is whether Rule 11, requiring equal distribution of overtime, had been violated by carrier when, on July 1, 9, 15, 22 and August 5 and 12, 1978, it employed Sheet Metal Workers James Nurenburg, Augustine Mahilum, and Norman Christopher on an overtime basis at its California Avenue Shop. These three men, rather than the eight claimants in this case, were required to perform work on a Budd rail diesel car.

Carrier states that the three named employees were assigned overtime work on the Budd car on the dates specified in the claim for a number of reasons. It claims that these employees were familiar with the Budd car project and were especially qualified to do the required work. In addition, a tight schedule of completion had to be maintained, because an outside electrical contractor was involved in the project and the contractor could not be delayed in its time

schedule. Carrier also based its action in this case on the fact that Rule 11 states that overtime will be distributed as equally as possible and that the special requirements of the Budd car project make it impossible to give overtime to each man at the shop on an equal basis. It finally asserts that the organization has not met its burden of proof in this instance. It has not, by fact or record, demonstrated that carrier, because of this one overtime situation, is in violation of Rule 11.

The organization argues that all sheet metal workers at the location are equally qualified to do the work in question and that more than three employees should have been used to do 93 hours of overtime work. The organization claims that the practice on the property for the distribution of overtime involves both the organization and the local chairman and that this has been the case for the past 20 years. When overtime was required, management would contact the local chairman requesting the number of men needed. The local chairman would then contact the next man in line for the work. This procedure was not followed in this case. The organization finally asserts that during the period from July 1, 1978, to August 12, 1978, only three sheet metal workers were allowed overtime: 70 hours to one and 17 and 6 hours, respectively, to two others. These numbers themselves justify the union's claim of unequal distribution.

While the requirement of Rule 11 that overtime be distributed as equally as possible does place some limits on carrier's right to arbitrarily assign overtime as it desires, it does give the carrier some leeway in the choice of employees to do a particular overtime assignment. Numerous awards of this board have adopted that principle and it has not been seriously challenged by the organization in most situations.

Certain local arrangements, however, have been the basis for claims in this area. It appears from the record of this case that failure of carrier to follow the existing practice of contacting the local chairman when overtime work was needed has been the gravamen of this dispute. Whether the local chairman must be contacted in situations such as this is not an issue before this board, nor does this fact have anything to do with the violation of Rule 11. This board, however, feels that some comment on local cooperation might be in order. Such a statement is only speculative on our part, but perhaps, if the past practice had been followed and the local chairman had been contacted before the overtime work was assigned, this claim may never have arisen.

Rule 11, however, is in dispute in this case. A review of the record before us and a review of numerous awards cited by both parties, including a recent award by this referee (Second Division, Award No. 8065), do not support a sustaining Award.

While carrier may have stretched the bounds of equality by granting one employee 70 hours overtime, another 17, and a third 6, while eight other men received no overtime, the record is barren of any evidence to prove that carrier, by this assignment in this specific case, violated the agreement. While in a specific situation, such as we have here, it may appear that inequality exists, it is well settled that equal distribution rules need not be applied on a single incident basis.

A demonstration by carrier that a general program of equal distribution of overtime at a location exists has been held by this board to meet the requirements of Rule 11. The organization has not demonstrated that such a program does not exist at the California area shops. Absent such a showing, this board must issue a denial award.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of October, 1980.