

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated Rule 8 (a) and (b) of the controlling Agreement when they called Carman W. Murray to accompany the wrecking outfit, October 6, 1977, in place of Carman R. Rinehart.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman R. Rinehart in the amount of forty-three (43) hours at the punitive rate account of their violation of his overtime rights.

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 assignment of overtime has been the subject of numerous awards. For example:

The Organization alleges that Carrier violated Rule 8 (b) by not calling claimant for overtime in turn. This Board has consistently found that Rule 8(b) on this railroad does not require the calling of employees on a first in/first out basis and does not require payment of a "runaround" simply because they are not called in order. See, so holding, Second Division Award No. 6631 (Lieberman):

"Carrier states, and we agree, that absolute equalization of overtime is impossible and was not contemplated by the parties. Further, it is argued persuasively that the provisions of Rule 8(b) do not require a first-in first-out award of overtime in any given instance. Carrier cites a number of awards dealing with similar equalization of overtime rules in support of its position. It is noted that these awards hold quite consistently that such rules do not require a rigid procedure for distribution of overtime but are properly implemented if the overtime

"work '... is distributed substantially equally over a reasonable period of time' (Award 5136). Also see Awards 2123 and 4980."

Also Award No. 7624 (Williams):

"The issue in this case is whether Rule 8 requiring the equal distribution of overtime was violated when the Claimant was not called for certain overtime work on October 28th, 1974. This Board has held in numerous awards that such rules are properly observed if work is distributed substantially equally over a reasonable period of time. An isolated incident does not substantiate a claim. A valid claim must be based on a reasonable period of time when overtime has not been distributed equally. Even if the claimant was entitled to the work in this case, he has not shown that the Carrier has failed to equalize overtime over a reasonable period of time. The claim therefore must be denied."

And Award No. 7897 (Weiss):

"We find support in our position in a prior Award by this Division between these same two parties, Award No. 6613 (Lieberman), in which, although the Board sustains the claim on other grounds, it agreed with Carrier's argument that 'the provisions of Rule 8(b) do not require a first-in first-out award of overtime in any given instance.'

In light of the above, we will deny the claim.

AWARD: Claim denied."

The three above Awards clearly support Carrier's position that Rule 8(b) did not require that claimant be called and used for the wrecking service overtime.

Furthermore, the carrier contends, and we agree, that Rule 8(b) of the controlling agreement does not contemplate absolute equality in the distribution of overtime. Second Division Award No. 6613 (Lieberman). A Claim for improper distribution must be measured over a period of time and not tied to one particular incident. Second Division Award No. 6420 (Shapiro). From the record, it is clear that the organization failed to prove that the claimants were denied access to substantially equal overtime over a period of time. Indeed, there has been no showing that these two claimants were deprived of overtime opportunities during a period of time as a result of the Carrier's assignment on June 29, 1977, and **concomitantly**, no proof that the claimants were ready and willing to perform the work. Second Division Award No. 7624 (Williams). Thus, the carrier did not violate the 8(b) overtime distribution provisions.

In summation, the Carrier did not violate Rule 8(a) and (b) of the controlling agreement when they called Carman W. Murray to accompany the wrecking outfit October 6th, 1977.

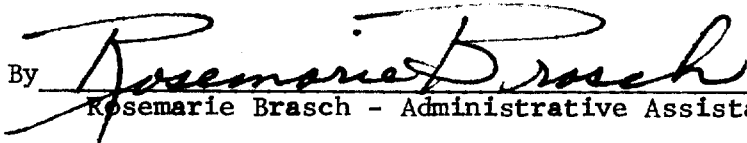
A W A R D

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 April, 1981.