

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Chicago Terminal Railroad Company violated the terms and conditions of the current working agreement, specifically Article V of the August 21, 1954 National Agreement when Mr. H. D. Swann, Manager Labor Relations, failed to timely respond to the General Chairman's claim letter dated December 7, 1978 until February 9, 1979, which is sixty-four (64) days after claim was filed.
2. That the Baltimore and Ohio Chicago Terminal Railroad Company violated rule #9 of the current working agreement when they bypassed Carman Gerald Cyr who was first out on the overtime board.
3. That accordingly the Baltimore and Ohio Chicago Terminal Railroad Company be ordered to compensate Carman Gerald Cyr eight (8) hours pay at the time and one-half rate of pay for this violation.

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.

The Claimant, Carman G. Cyr, held a regular assignment at Barr Yard, Chicago, Illinois. His assignment was on the first shift, with rest days of Saturday and Sunday. On Saturday, September 16, 1978, Mr. Cyr stood first out on the Carmen's overtime board. The Carrier determined it was necessary to utilize a Carmen on Saturday, September 16, 1978; and in calling an employee for this work, the foreman on duty, through an error, bypassed Claimant Cyr and called Carman Orzel, who worked eight hours on this date. The instant claim was filed on behalf of Mr. Cyr for eight hours pay at the time and one-half rate; and declined by the Carrier.

The claim was appealed by letter dated December 7, 1978 which was received at the Office of the Manager Labor Relations on December 13, 1978. The Carrier declined the claim by letter dated February 9, 1979 and the declination was

received by the General Chairman on February 12, 1979. The Organization contends that the Carrier violated Article V of the August 21, 1954 Agreement in that the Carrier's declination was not received within sixty days of the appeal.

The Organization's position on its contention that the time limits rule was violated is that the General Chairman's appeal letter was mailed on December 7, 1978 and the Carrier replied on February 9, 1979, a time lapse of sixty-four days; or, taking the date of December 13, 1978, the date on which the Carrier states it received the Organization's appeal letter, to the date on which the Organization received the Carrier's response, February 12, 1979, there is a time lapse of sixty-two days.

The Carrier's position is that the appeal was received on December 13, 1978 and the response was mailed on February 9, 1979 on the fifty-eighth day after receipt of the appeal. It states that such is within the time limits of the rule.

Article V of the August 21, 1954 Agreement requires that the Carrier shall reply "within 60 days from the date same is filed..."

In Third Division Award No. 14695, it was stated:

"The National Disputes Committee Decision No. 16, dated March 17, 1965, incorporated into Award 13780, held that the claim should be considered 'filed' on the date received by the Carrier. Consequently, the date of receipt determines the 60 day time limit which commences to run from that date. Subsequently, Awards have held that the Carrier must stop running of the time limit by mailing or 'posting the notice required within the 60 days of the date that the claim was received.' (Award 11575 and Second Division 3656)." (Emphasis added)

Second Division Award No. 3656 focused on the Carrier's receipt of an appeal through the mails as the start of the sixty-day time limit. Second Division Award 7626 recognized that a Carrier complies with time limits provisions when it gives up control of a letter by dispatching it in the U.S. Mails or other method of communication authorized by the Organization within the time limits.

In the instant case the appeal was received by the Carrier on December 13, 1978 and the Carrier's reply was placed in the U.S. Mail on February 9, 1979 on the 58th day from the receipt of the appeal. We find therefore that the Carrier did timely deny the appeal within the 60-day time limit of Article V of the August 21, 1954 Agreement.

Rule 9 of the Agreement of the parties states:

"Employees will not be laid off during regular working hours to equalize overtime. Overtime will be distributed as equally as possible among the employees affected."

The record indicates that the overtime board utilized at Barr Yard is an "equalizing" arrangement. A written list is maintained by the Local Chairman which lists the employees who desire to be called for overtime in order of their standing

with respect to the hours of overtime accumulated. Employees are called by foremen for overtime from this list, starting with the employee whose name appears at the top of the list. Based on reports of overtime worked refused or missed, the Local Chairman adjusts the list for equalization purposes.

As the Organization points out, the Local Chairman rearranges the names on the overtime list according to the number of overtime hours accumulated; however, the Organization does not call individuals, but rather in most instances a foreman does the calling.

Rule 9 does not restrict overtime distribution to a first-in first-out basis; and the Rule is complied with if the overtime work is as equally distributed as possible over a reasonable period of time. Both Mr. Cyr and Mr. Orzel are listed on the same overtime board, and no reason exists for Mr. Cyr not being given an opportunity to regain the lost overtime opportunity resulting from Mr. Orzel's being erroneously called on the date in question.

The Organization contends that if a foreman elects to bypass a person at the top of the overtime list week after week, there is no possible way for that individual to have the overtime equalized. Such however is not the fact situation before the Board; and we cannot make our decision on such speculation. But rather, the facts of record indicate an error on the part of a foreman on a specific date. And, the employee in question, Mr. Cyr, under the system in effect at Barr Yard, would have the opportunity to regain the lost opportunity. Please see Second Division Awards 5136, 4980, 2123, 2035, and 2040.

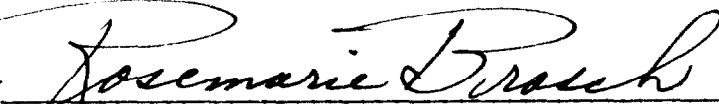
A W A R D

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 9th day of December, 1981.