

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

Dispute: Claim of Employee:

1. That the Western Pacific Railroad Company violated the controlling Agreement when they failed to call Carman David Butler to perform service on June 2, 1979 (his second rest day) at which time he was first out on the overtime board, due to having worked a lesser number of hours.
2. That accordingly, he be compensated in the amount of eight (8) hours pay at the double time rate.

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.

Claimant, a second shift carman at Oroville, California, seeks eight hours of pay at the double time rate arising out of an alleged violation of Rule 11(b) of the controlling agreement. The pertinent facts are uncontested. On June 2, 1979, Claimant's second consecutive rest day, the Carrier called a first trick carman to work eight hours of overtime. Claimant was available but was not called. As of June 2, 1979, the Claimant had accumulated 347 hours of overtime for 1979 while the other carman had worked 423 hours of overtime during the same period.

The Organization argues that the Carrier intentionally and improperly bypassed Claimant in assigning the eight hours of overtime solely to avoid paying him double time. Also, the Organization asserts that because Claimant was first out on the overtime board (he had the lowest total of overtime hours for 1979), the Carrier was obligated to call Claimant pursuant to Rule 11(b) before calling the other carman who had already accumulated 76 more overtime hours than Claimant had worked.

The Carrier places a different interpretation on Rule 11(b). Since Rule 11(b) provides only for equalization of overtime, the Carrier maintains that it retains the prerogative to select who should perform each instance of overtime

work. In addition, the Carrier urges us to discount the overtime hours performed by the other carman during Claimant's regular (second) shift. After eliminating the overtime which occurred during Claimant's regular assignment, the Carrier concludes that Claimant has accumulated an equal number of overtime hours. Lastly, the Carrier argues that it has no obligation to distribute overtime equally if Claimant has been called on numerous occasions but has refused to accept some overtime assignments.

Rule 11(b) provides:

"(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

Rule 11(b) does not require absolute equality in the assignment of overtime but the Carrier is under an obligation to exercise good faith efforts to distribute overtime in a substantially equal fashion over a reasonable period of time. Second Division Award No. 8708 (Marx). While Rule 11(b) does not give an employe the right to any specific overtime assignment even if he is listed first on the overtime board, the Carrier's selection of employes to work overtime is conditioned on maintaining a general program of equal overtime distribution. Second Division Awards No. 8488 (Dennis) and No. 8163 (Franden). In Second Division Award No. 8065 (Dennis) which involved a similar dispute between these same parties, we ruled that the organization failed to satisfy its burden of proving that the Carrier did not distribute overtime on an equitable basis over a reasonable period. Therefore, the issue in this claim is whether the Organization has presented proof of unequal overtime distribution between Claimant and the other carman over a reasonable period of time and, if so, has the Carrier raised any valid defense.

As of June 2, 1979, Claimant had accumulated approximately 76 hours less than the aggregate overtime accumulated by the carman who was called. The discrepancy in overtime continued to increase so that by the middle of August, 1979, Claimant had fallen 114 hours behind the other carman. Given the large size of the differential it is highly unlikely that Claimant would be able to accumulate a substantially equal amount of overtime within any reasonable period of time. The Organization has, therefore, submitted sufficient evidence to show an inequitable distribution of overtime to the detriment of Claimant.

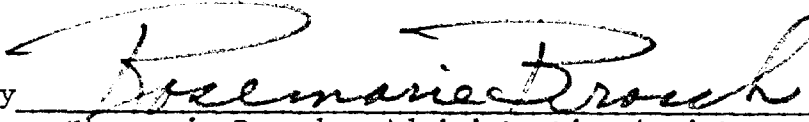
The Carrier's primary defense is Claimant's consistent rejection of several past overtime assignments. The Organization has not directly refuted the Carrier's contention that Claimant had refused overtime work in 1979. Claimant's rejection of past overtime assignments constitutes a rational explanation for the disparate distribution of overtime in this case. Second Division Award No. 9082 (C. R. Sickles). For the reasons more fully set forth in Award No. 9082, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.