

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Chesapeake and Ohio Railway Company

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chesapeake and Ohio Railway Company violated the current Agreement, particularly Rule 11 Shop Crafts Agreement, when they unjustly deprived Crane Operator R. W. Deal of overtime on November 10, 19, 20, 21 and 23, 1979, at the Chesapeake and Ohio Locomotive Shops, Huntington, West Virginia.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to compensate Crane Operator R. W. Deal for four (4) hours pay for November 10, 1979, and eight (8) hours pay for November 19, 20, 21 and 23, 1979, at the time and one-half 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 employes 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, who was the senior applicant was awarded a temporary Crane Operator position on January 12, 1979, with hours from 7:00 A.M. to 7:30 P.M. - a twelve (12) hour day assignment which was paid at straight time for eight (8) hours and at the time and one-half rate for four (4) hours. Claimant worked that position until February 12, 1979, when it was abolished.

Other twelve (12) hour Crane Operator assignments were needed for November 10, 19, 20, 21, and 23, 1979. On each of those dates, a crane operator, who had worked less overtime than the Claimant was called to fill each of these assignments. Claimant's name was actually taken off the rotary overtime list until December 3, 1979, when, in the opinion of the Carrier, he again became eligible for overtime assignments.

Employes contend that Claimant was on a regular assignment from January 12, 1979 to February 12, 1979, and that this is not contemplated as overtime work for equal distribution under Rule 11. Paragraph (4) of Rule 11 reads as follows:

"There will be as near as possible, an equal distribution of overtime between employes who voluntarily sign the overtime lists."

It is presumed, although there is no clear evidence in the record, that the Claimant voluntarily signed the overtime list.

Certainly, if Crane Operators were required to work twelve (12) hour assignments on any day or days between January 12, 1979 and February 12, 1979, the Claimant would not have been eligible because he was then working on a twelve (12) hour assignment. The fact that he remained on the voluntary overtime list would have had no affect. Other eligible Crane Operators would have been assigned in rotation order.

Rule 11(c) states that:

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

There can be no question that Mr. Deal earned four (4) hours overtime for every twelve (12) hour day he worked between January 12, 1979 to February 12, 1979. Assuming that he worked a five (5) day week, he was paid at the time and one half rate for at least eighty (80) hours in the period (4 hours x 5 days x 4 weeks). He earned more overtime in that period than any other eligible and available employe on the rotating overtime list. And it is not denied that as of November 10, 19, 20, 21, and 23, 1979, he still had worked and earned more overtime pay than any other employe on the overtime rotating list.

Rule 11 makes no distinction between overtime earned on a temporary full time assignment and overtime earned sporadically on a daily basis. It says only that overtime will be equalized as near as possible and that an overtime list will be kept so that equal distribution would in fact be so administered.

Upon this record, employes other than the Claimant were entitled to the twelve (12) hour assignments on the dates claimed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of October, 1983.