

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) failed to call electricians for available overtime with the purpose in view of distributing the overtime equally, at Beech Grove, Indiana, May 30, 1981 unjustly depriving Electrician J. R. Roberson of the additional work opportunity that would otherwise normally have accrued to him at the overtime rate.
2. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) failed to distribute overtime in conjunction with the duly authorized local committee or their representative at Beech Grove, Indiana, May 30, 1981; unjustly depriving Electrician Roberson of the additional work opportunity that would normally have accrued to him at the overtime rate.
3. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to compensate Electrician J. R. Roberson an additional eight (8) hours at time and one-half the applicable Electricians' rate in order to make him whole.

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 employees 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.

On May 29, 1981, Claimant, J. R. Roberson, was employed as an electrician, Trim Shop, Second Track, by the National Railroad Passenger Corporation (Amtrak), hereinafter referred to as the Carrier, at the Beech Grove, Indiana, Maintenance Facility.

On May 30, 1981, the Carrier assigned an electrician from another department to perform overtime work in the Trim Shop. The Carrier did not call Claimant to work that day even though he was available, as it was his rest day.

The Organization's position is that the Carrier should have filled the electrician overtime assignment as provided in Rule 13 of the Controlling Agreement. Rule 13 provides as follows:

"(f) When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time. Overtime to be distributed in conjunction with the duly authorized local committee of the craft or their representative and the Local Management. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

The Organization contends that the Carrier filled the overtime assignments arbitrarily and capriciously and in bad faith. The Organization claims that the overtime assignment was not made in conjunction with the duly authorized local committee of the electricians for the purpose of distributing overtime equally.

For this alleged violation of Rule 13, the Organization seeks, on Claimant's behalf, eight hours' pay at time and one-half the applicable electrician's rate of pay.

The Carrier's position is that it did not violate Rule 13 as Rule 13 requires that a record of overtime be kept as a means to accomplish an equal distribution of the work over a period of time. The rule, according to the Carrier, does not require a strict rotation system, nor does it specify the method of distribution.

The Carrier contends that the Organization has failed to establish that, over a period of time, Claimant has been treated inequitably in terms of overtime compensation. Furthermore, the Carrier contends that Rule 13(f) is silent on the subject of penalty payment. Thus, if Carrier were found to have violated Rule 13(f), Claimant would be entitled only to a correction of the problem, not to monetary damages.

After reviewing the record in this case, it is the position of this Board that the Carrier did not violate Rule 13(f) by failing to call the Claimant for the overtime assignment.

In numerous cases, claims have been denied based upon the holding that equal distribution rules, such as 13(f), absent special language, must be interpreted as applying over a reasonable period of time and not on an isolated incident basis. In Second Division Award 7624, Referee Williams stated the following principle:

"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 28, 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."

(See also Second Division Award 8065).


As the Organization does not establish that the Claimant has been treated inequitably in terms of overtime compensation over a reasonable period of time, no violation of Rule 13(f) can be found, and this claim must be denied. However, this Board recommends that the parties meet to discuss developing a better recordkeeping and overtime distribution system in order to avoid problems like this in the future.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985