Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10740
SECOND DIVISION Docket No. 10519
2-MP-CM-'86

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Agreement of April 10, 1980 at Houston, Texas when they used a Carman who was not on the overtime board to drive truck, November 13, 1982.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman P. Z. James in the amount of seven (7) and one-half (.5) hours at the punitive rate 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 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 this dispute waived right of appearance at hearing thereon.

The Carrier operates a large train yard and repair facility at Houston, Texas. On Saturday, November 13, 1982, the Carrier discovered that the kerosene fuel to supply caboose stoves at the caboose supply tracks at the Settegast Yard was exhausted. The Carrier assigned Carman B. Davis to transport the fuel to the caboose yard. Carman Davis had just completed his regularly-scheduled shift, ending at 3:00 P.M., and he was required to work 7.5 hours overtime transporting the fuel.

The Organization claims that the overtime hours should have been assigned instead to Carman P. Z. James. Although the day in question was one of his regularly-scheduled rest days, Carman James was the first name "out" on a list of Carmen available for overtime work as truck drivers. Carman Davis, who was assigned the work, was not on the overtime list.

The overtime list in question was prepared pursuant to a local agreement between the parties to establish such a list. The Carrier claims that this list is not binding, and instead relies upon the only language concerning overtime in the main agreement, which states, in relevant part:

> "Rule 8. Distribution of Overtime
>
> "(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairmen will, upon request, be furnished with record."

The Carrier cites numerous Awards of this Board which hold that a Carrier need not adhere rigidly to an Overtime Board, as long as it meets the contract's requirement that overtime be assigned on a roughly equal basis among the men over a period of time. Second Division Awards Nos. 8689, 7897, and 9129.

The issue in this dispute is slightly different, because here the employe assigned to perform the work was not on the Overtime Board at all, whereas in the Awards cited above the employe assigned to perform the work was on the overtime list, but was not the first person on the list. The Board has addressed our issue, however, in Second Division Award No. 9267, where it held that the language of this Agreement "does not limit the Carrier to calling only employes on the overtime board...." Award No. 9267 involves the same Agreement Rule and parties as the claim at issue here, and a similar local agreement concerning the assignment of overtime. In that Award the Board held that the lack of contract language is not a per se barrier to the claim if the Organization could show that the Carrier had violated a consistent past practice. The Organization has not presented any evidence concerning a past practice in this case. The Board must rely on the contract language exclusively and deny the claim.

In doing so the Board need not address at great length the other issues raised by the parties in this dispute. Previous Awards of this Board, referred to above, have determined the proper weight to be given to a local agreement, so the parties' arguments concerning the effect of this local agreement are not relevant. The Board does note, however, that the local agreement relied upon by the Organization in this dispute simply established an Overtime Board for truck drivers. It does not state that all overtime for truck drivers will be assigned off this Board, and therefore carries even less weight than, for example, the local agreement referred to in Second Division Award No. 7897, which stated: "We propose to work all road work, and all overtime work off of one rotating overtime board."

The Board views with equal skepticism, however, the Carrier's claim that a local agreement signed by its master mechanic has no force once he is transferred. The Board need not decide the merits of this argument, given the lack of overall weight accorded to the local agreement.

Because the Organization has failed to meet its burden to prove that past practice of the Carrier was to assign overtime exclusively from the Overtime Board, the Board must deny the claims.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.