

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) failed to call electricians for available overtime work with the purpose in view of distributing the overtime equally, at Beech Grove, Indiana, January 15, 1981; unjustly depriving Electrician Tim Pohlman 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, January 15 1981; unjustly depriving Electrician Tim Pohlman 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 Tim Pohlman an additional four (4) hours' pay 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 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 were given due notice of hearing thereon.

Claimant is employed as an Electrician on the second shift in the Trim Shop at Carrier's Beech Grove, Indiana Maintenance Facility.

At the time of the incident which gave rise to the instant Claim, Claimant and Electrician David Briggs were supervised by Foreman W. Kissling.

As support for its basic position in this dispute, Carrier cites numerous Second Division Awards which hold that overtime need only be distributed as nearly as possible over a reasonable period of time in order to be found to be in compliance with the applicable language (Second Division Awards No. 4519, 8833, and 8835). Specifically, Carrier directs our attention to the award in Public Law Board No. 3466, Award No. 1, which interpreted Rule 13(f) on this property, and which stated in significant part:

"Carrier is not required to grant overtime work on a seniority basis. It is only required by the Rule to distribute overtime equally among the men over a period of time. It is not required to call Electricians for overtime on a first in-first out basis or is it required to utilize seniority in assigning an Electrician to a specific overtime task."

Carrier's last significant area of argumentation in this case is that Rule 13(f) does not support a claim for monetary relief as requested by Organization.

As an initial point of departure in this analysis, Carrier is correct in its interpretation that Rule 13(f) does not require overtime to be assigned in a lockstep fashion. Carrier, therefore, can repeatedly assign overtime to one employee so long as said overtime assignments are equally distributed to other qualified employees within a reasonable period of time. As was noted in Public Law Board No. 3466, Award No. 1:

"While Rule 13(f) gives Carrier considerable leeway in assigning employees to overtime jobs, it is required by the Rule to work with the Local Committee of the craft to establish a system or procedure for overtime assignment. Records must be kept in order to verify that the procedure has been followed in the event that the practice of distributing overtime is challenged."

Despite the foregoing, however, and while the Board denied the claim in the above cited Award No. 1, the Board therein also recognized that Rule 13(f) contemplates cooperation and consultation with the Local Committee when local Management is in the process of assigning overtime. Without consultation and cooperation between the parties at such time, Rule 13(f) clearly cannot be administered according to the dictates of its authors. Indeed, nothing in the Rule supports Carrier's view of only "occasional consultation." Nor has any evidence been adduced by Carrier to indicate such intent when said language was negotiated. Therefore, consultation becomes a threshold requirement for each party's total compliance with Rule 13(f). Since Carrier, in the instant case, admittedly failed to consult with the Local Committee before assigning overtime to Electrician Briggs on January 15, 1981, we hold that Carrier's action was in clear violation of Rule 13(f).

CARRIER MEMBERS' DISSENT
TO
AWARD 11169, DOCKET 10051
(Referee John J. Mikrut, Jr.)

It is clear that the Majority has based this Award on assumption and illogical conclusion and has seriously erred in granting compensation in this case.

While the Majority was correct in pointing out that "Rule 13 (f) does not require overtime to be assigned in a lockstep fashion" but rather must be "equally distributed...within a reasonable period of time", the Majority has seriously erred in its view of the degree of consultation which is required with the Local Committee. It is illogical to imply that each and every time overtime is assigned the Local Committee must specifically be consulted. While not disputing that consultation is an important element of Rule 13 (f), what happens when no one from the Local Committee is present to consult which can easily happen, particularly in small facilities and/or on off-shifts? What happens if an employee is in the midst of completing an assignment as in this case where such assignment runs into overtime? In these cases is work to be stopped or not assigned until some specific consultation occurs? The Majority has apparently assumed so by implying, although by no means clear, that consultation must take place each and every time. With one stroke of the pen the Majority has erroneously attempted to build rigidity and inflexibility into a Rule which provides some flexibility and clearly recognizes that overtime inequities may exist at any given moment in time and that overtime assignments should be equally distributed over a reasonable period. The Majority has reached an illogical and absurd conclusion in this regard.

"...equal distribution rules, such as Rule 13 (f), absent special language, must be interpreted as applying over a reasonable period of time and not on an isolated incident basis. (Emphasis added)

* * * * *

"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."

Finally, to add insult to injury, the Majority knowingly disregarded the general direction of prior Awards of this Board concerning compensation for time not worked which dictates that in cases of Agreement violations, the straight time rate of pay is appropriate; the overtime rate is applicable only to time worked while the pro rata rate is the measure of value of work lost.

The Majority held in part:

"...while this Board ordinarily does not award a premium rate for time not worked (as Organization requests herein), we note that the particular violation which has been proven involves an improper assignment of overtime. For this reason, therefore, we sustain the Claim for four (4) hours pay at time and one-half at the applicable Electricians' rate as requested."

Ironically, in Award 10881 involving a similar issue, the Board denied that portion of the claim seeking compensation at the time and one-half and double time rates by concluding:

"According to the Board's practice of awarding straight time for time not actually worked, Claimants are entitled to be compensated only for the various hours claimed at a straight time rate."