

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Southern Pacific Transportation Company
(Eastern Lines)

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated Rule 32 of the controlling agreement when Superintendent, Mr. W. L. Martin, failed to timely respond to Local Chairman M. T. Dennis' letter dated September 30, 1984 until December 4, 1984; also Mr. Martin failed to give any reason for declining the claim which is also a violation of Rule 32 of the agreement.

2. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rules 3, 5 and 15, when Carman Ray Kellebrew was denied the right to work his regular position when it worked on Labor Day, September 3, 1984.

3. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman Kellebrew in the amount of eight hours (8') at overtime rate for September 3, 1984 as he was available and should have been called to fill his regular position when it was worked on the holiday.

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 is employed as a Carman by the Carrier at its Beaumont, Texas facility, where he is regularly assigned to the road work position. On Labor Day, September 3, 1984, Carrier blanked all Carmen positions at

Beaumont; later, when it became clear that Carmen's work had to be performed, Carrier assigned another Carman to fill the position. The Organization thereafter filed a Claim on Claimant's behalf, challenging Carrier's assignment of another Carman to work on the holiday as a violation of Rules 3, 5, and 15 of the controlling Agreement. These Rules provide, in part:

"RULE 3

Overtime. All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Holiday Work. Work performed on the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half."

"August 19, 1960, Agreement [Amendment].

Section 1. Subject to the qualifying requirements applicable to regularly assigned employees contained in Section 3 hereof, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

The practice of regularly assigning employees by bulletin to work on holidays, and men called to fill their places on such regularly bulletined assignments, may be continued. In the application of Rule 3, it is understood and agreed the Carrier shall have the right to determine the number of employees to be worked on holidays."

"RULE 5

Full Day on Holidays. Employees regularly assigned to work on holidays or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known."

"RULE 15

Bulletining Vacancies. When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or vacancies that may be desirable to them. All vacancies or new jobs created, including differential jobs as helpers, will be bulletined."

The Organization initially contends that under Rule 32(a) of the Agreement, if Carrier denies a claim, then it must notify the employee or his representative in writing within 60 days of its reasons for denying the claim. The Organization argues that Carrier responded to the Organization's appeal by letter dated December 4, 1984, 65 days after the date of appeal. Moreover, Carrier did not specify the reasons for its denial of the Claim. The Organization contends that because Carrier violated Rule 32(a); the Claim should be allowed.

The Organization next asserts that when Carrier discovered that work had to be performed in Claimant's position, Carrier violated the Agreement by failing to call Claimant to perform the work. The Organization argues that because Claimant was available and willing to work at his regular position on the holiday in question, there was no need to go to the Overtime Board as provided in the Holiday Agreement of February, 1968. The Organization points out that all Carman positions were blanked; because work had to be performed on Claimant's position, Claimant was entitled to perform the work. The Organization therefore contends that the Claim should be sustained, and the Claimant compensated in the amount of eight hours' pay at the overtime rate.

The Carrier contends that it received the Organization's appeal on October 8, 1984, and declined the Claim by letter dated December 4, 1984. Carrier argues that this Board has held that the date of receipt, not the date of filing, determines the time limit. Carrier asserts that it declined the Claim within the 60-day period provided in Rule 32. Carrier further argues that the December 4 letter gives a sufficient reason for its decision to deny the Claim.

The Carrier also points out that Claimant's assignment was from 7:00 A.M. to 3:00 P.M. Carrier contends that on the holiday in question, an emergency occurred at 3:00 P.M. Carrier asserts that the Carman called to perform the work had requested to work overtime. Moreover, it is undisputed that this Carman was first out on the Overtime Board. Carrier argues that the disputed work was incidental overtime because of emergency work; Carrier's assignment of the work complied with the February, 1968 Holiday Agreement.

Carrier next argues that no Carman has a contractual right to work on a holiday; further, Rule 3 allows Carrier to blank positions. Carrier further argues that this Board has held that holiday work is casual work, not assigned to a position. Moreover, the disputed work was assigned outside of Claimant's scheduled work hours. Carrier also asserts that its assignment complies with Rule 8, which requires Carrier to keep records of overtime so as to distribute overtime hours equally. Carrier therefore contends that Claimant was not entitled to perform the disputed work, and the Claim should be denied in its entirety.

This Board has reviewed the evidence in this case and with respect to the procedural claims of the Organization, we find that the Carrier responded to the Claim within 60 days of its receipt. This Board has consistently held that the time limit to respond to a claim begins on the date that it was received, not the date it was mailed. (See Second Division Awards 10637, 10145, 8833, and 8268.) Hence, the response of the Carrier was not late and does not require sustaining the Claim. Moreover, this Board finds that the Carrier's denial was sufficient in that it gave a reason for the denial, and that is all that is required. (See Second Division Award 10141.)


With respect to the merits, it is clear that the employee who was called in to perform the emergency work at 3 P.M. had requested overtime and was first on the list. The employee was entitled to the work inasmuch as he was first out on the Overtime Board. The work at issue occurred after the regular assignment of the Claimant. Therefore, the work was outside of the regular scheduled work hours of the Claimant's assignment, and he was not entitled to perform it. The Carrier assigned the work to the appropriate person under the Rules and the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of May 1987.