

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employee:

1. That the Atchison, Topeka and Santa Fe Railway Company erred and violated the controlling agreement, specifically rule 105-2a and 2b and Rule 10(e) of the September 1, 1974 Agreement, as amended, when the Carrier elected to use Carman Jack Helmig in overtime hours during his rest days prior to the start of his vacation for emergency road work and wrecking service, thereby depriving Claimant Albert Perez, Jr. of overtime that was due to him by virtue of being first out on overtime board to be used as groundman in the use of Barstow wrecker derrick on October 3, 1982 through October 5, 1982.

2. That accordingly the Carrier be ordered to compensate Carman Albert Perez, Jr. in the amount of sixty-one (61) hours at the pro rata rate of pay.

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.

The Claimant was assigned to work as a Carman at Barstow, California. His assignment work week was Monday through Friday, with hours of work from 7:00 A.M. to 3:30 P.M., and rest days of Saturday and Sunday.

The significant events triggering the Claim before the Board arose on October 3, 1982, a Sunday. On that date, Carman and two other Carmen were called at approximately 4:00 A.M. off the overtime board to go to a derailment. At approximately 6:25 A.M. on the same date, a wrecker derrick was

dispatched to a wreck site at Goffs, California. Because one of the regular ground crew members was not available, Carman F. M. Sanchez was used, and a relief Derrick Engineer, A. R. Chavez, was also called because regular Derrick Engineer Helmig had been called (as noted above) and was working at a derailment at another location. However, because of a more urgent need, the Carrier also then dispatched Helmig and other two employees to Goffs on October 3, 1982. At some point after his arrival, Helmig assumed the Derrick Engineer's position, although the record is not clear at precisely what hour this occurred. At 5:00 P.M. on October 3, all employees at the Goffs wreck site, except Helmig, were transported to their home station at Barstow. Helmig remained with the derrick in order to protect it while en route to Barstow. The train transporting the derrick did not arrive at Barstow until 3:30 A.M. on October 5, 1982. In the meantime, Helmig was relieved at approximately 10:30 A.M. on October 4 by relief Derrick Engineer Chavez.

The Board has carefully reviewed the record developed on the property and finds that there are a number of relevant issues that were not fully addressed by either party on the property. As best as we can ascertain, the Claimant asserts a violation which stems from his utilization as the Derrick Engineer. Yet, he claims compensation on the ground that he should have been called as a Groundman and not as a Derrick Engineer (the job actually filled). It is clear the Helmig should not have been called off the overtime board. However, it is unrefuted that the Organization was primarily responsible for ascertaining that the overtime board was current and correct -- an error that, at best, can be determined from the record that triggered the events which occurred and eventually led to the claim before us. Nevertheless, the evidence is sufficient to show that Helmig should have been sent home at the same time as the other workers. Accordingly, the Claimant should have replaced Helmig and a claim is proper for the period from 5:00 P.M. on October 3 to 10:30 A.M. on October 4, 1982.

In view of all of the foregoing and limited to the circumstances of this case, we sustain the Claim at a pro rata rate for the period noted above, less the eight hours the Claimant worked on October 4, 1982.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.