

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated Rule 31 when on Thursday, June 23, 1988, Supervisor Ron Jordon was performing carman's work; opening hopper doors, positioning and activating shakers and closing doors on numerous occasions throughout the 7:00 a.m. through 3:30 p.m. shift. This all in violation of rules of the current agreements.

2. That because of such violation the Norfolk and Western Railway Company be ordered to compensate Carman S. T. Saylor eight (8) hours wages at one and one-half times the pro rata rate as he was the next available carman on the overtime board and that the carrier be ordered to cease assigning supervisors to do carman's work.

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.

As Third Party in Interest, the International Brotherhood of Firemen and Oilers was advised of the pendency of this dispute and filed a Submission with the Division.

The Organization contends that Carrier violated Rule 31 of the Controlling Agreement when a Supervisor performed asserted Carman's work on June 23, 1988. This work included opening hopper doors, positioning and activating stokers and closing doors on the hopper cars. Specifically, the Organization maintains that said work accrues under Rule 31 to the Carmen's craft and accordingly, Carrier was obligated to use Carmen to perform this work, even on an overtime basis, if an insufficient number of Carmen were

on duty at the time. The portion of Rule 31 relied upon by the Organization is referenced in part as follows:

"RULE NO. 31 - ASSIGNMENT OF WORK

None but mechanics, apprentices and hourly rated gang leaders shall do mechanic's work as per special rules of each craft. This rule does not prohibit Foremen in the exercise of their duties from performing work."

It points out that the Supervisor who performed this work was not a "Working Gang Leader" and, as such, Carrier was required to call Claimant to perform the duties of inspecting and maintaining Freight cars.

In response Carrier argues that none of the rules cited by the Organization provide work exclusivity and observes that the Organization has not established exclusivity via an explicit showing of systemwide practice. It asserts that Rule 31 does not preclude Foremen from performing this work and notes that Rule 44 recognizes Supervisory gang leaders as employees covered by the Carmen's Agreement. It further notes that Claimant had withdrawn his request to work from the Overtime Board as evidenced by the actual overtime call lists for the period April 15, 1988, through July 4, 1988. On this point, it showed that Claimant's name no longer appeared on the Overtime Board after May 14, 1988, and further showed that no Claim was initiated contending that his name was improperly removed from the list.

In considering this case, the Board concurs with Carrier's position. Simply put, Claimant's name was not on the Overtime Board list for the period circa June 23, 1988, and there was no showing that it was improperly removed therefrom. Under these circumstances, Carrier was under no obligation to ascertain his availability for overtime work, particularly, since his name no longer appeared on the overtime list after May 14, 1988. In view of these facts and the absence of any showing of a Rule violation we are compelled to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1991.