

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
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement the Carrier violated Rule 10 when they failed to call Carman P. M. Collins, Andover, Virginia, for overtime by removing his name from the overtime list.
2. That the Carrier be ordered to pay Carman Collins 109 hours at the overtime rate for listed dates in November and December, 1988 and January, 1989.

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 Organization contends that Carrier violated the Controlling Agreement, particularly Rule 10, when Claimant's name was removed from the Overtime Board on October 11, 1988. It asserts that as a result of such removal, Claimant was denied fourteen (14) calls from November 19, 1988, through January 9, 1989, for a total of one hundred and nine (109) hours. Rule 10, in pertinent part reads:

"When it becomes necessary for employees covered by this agreement to work overtime, they shall not be laid off during regular work hours to equalize the time. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime as equally as possible consistent with forty (40) hour week rules."

It maintains that Carrier has no right to remove a carman's name from the overtime list since said option rests with the employee.

In rebuttal, Carrier points out that between June 7, 1988, and September 30, 1988, Claimant refused to work overtime on five (5) occasions and accordingly consistent with the January 29, 1988 policy notice addressed to all Mechanical Department Employees, it properly removed him from the overtime list. This notice reads:

"Any employee desiring to be placed on the Overtime Board should notify Foreman E.W. Collins by February 5, 1988. Once this overtime list has been completed the following revised policy will be in effect. This notice to precede all previous notices regarding Overtime Board. Employees on Overtime Board should make themselves available for this work. Any employee who declines to work overtime when notified three (3) times will be dropped from the overtime list. Any employee who cannot be reached to work overtime three (3) times without a valid reason will be dropped from the overtime list. Signed by Senior General Foreman"

It further notes that no exception was taken to this policy by the employees or the Local Chairman and observes that when Foreman E.W. Collins personally asked Claimant twice whether he wanted his name back on the overtime list, Claimant replied "No." It argues that the Organization has never shown how Rule 10 was actually violated or proven that overtime was not distributed equally as possible consistent with the forty (40) hour week rules as provided by Rule 10.

In considering this case, the Board concurs with Carrier's position. Firstly, there has been no showing how Rule 10 was violated specifically with respect to the Rule's operational requirements. In other words, there has been no factual demonstration that the overtime requirements were breached by Carrier's action. Secondly, there has been no showing that the January 29, 1988 Policy Notice was inconsistent with Rule 10 or that said notice was unacceptable or challenged by employees or the Local Chairman. Thirdly, by his own voluntary actions, Claimant refused to work overtime on five (5) occasions which justified his removal from the overtime list and refused his Foreman's requests to have his name placed back on the Overtime Board List. Accordingly, in view of these findings, and more pointedly the absence of evidence indicating a Rule 10 violation, this Board is compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of November 1991.