

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12390
Docket No. 12100
92-2-90-2-197

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of T.V.R. Carman M. L. Sidwell (hereinafter referred to as "claimant") and the provisions of Rule 11 of the Controlling Agreement when on March 31, 1988 and April 5, 6, 7, 8, 11, 12, 13, 14, 15, 18 and 19, 1988, employes chosen from a seniority roster instead of the overtime call board as is required under Rule 11 of the Shop Crafts Agreement.

2. Accordingly, the claimant is entitled to be compensated for all of the above listed dates, six (6) hours each day at the applicable Carmen's time and one-half rate for said violation.

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.

This claim concerns overtime work performed on specified dates in the Air Brake Shop at Raceland Car Shops. The Claimant states that he was denied the opportunity to participate in the overtime while being qualified to perform the work.

At issue here is Rule 11 and a July 1, 1948 Understanding which read, in pertinent part, as follows:

"(c) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

UNDERSTANDING -- Effective July 1, 1948

(3) There will be an overtime call list (or call board) established for the respective crafts or classes at the various shops or in the various departments or subdepartments, as may be agreed upon locally to meet service requirements, preferably by employees who volunteer for overtime service

(4) There will be, as near as possible, an equal distribution of overtime between employees who voluntarily sign the overtime call lists.

* * * * *

(10) It is understood that past practice will continue with respect to calling men for overtime who are assigned to special services, such as repairs to coal elevator and power plant machinery, etc."

The Carrier contends that the Air Brake Shop, where the overtime was worked, is "a small, one-shift operation staffed by employees with special skills" and that overtime there "has historically been assigned, when needed, by asking each employee if he desires to work," in consonance with Paragraph 10 of the Understanding quoted above. The Organization refers to an August 28, 1986 letter which appears to support the view that there was a "separate overtime board . . . maintained in the Air Brake Shop."

The Board cannot determine if the parties have agreed to treat the Air Brake Shop, or a portion thereof, as coming under Understanding 10 or whether an overtime board has been or should be maintained. This is for the parties' resolution. Such, however, is not determinative here. The Carrier contends that the Claimant, having refused overtime offers with consistency for several years, failed to indicate his current desire to work overtime. Absent such assertion, the Carrier reasonably assumed the Claimant was not available for voluntary overtime assignment.

Further, Rule 11 provides its own remedy in that overtime is intended to be distributed "equally." According to the Carrier, the Claimant had 21 opportunities to work overtime subsequent to filing the claim and accepted only twice. Thus, he frustrated the opportunity to equalize his overtime work with that of other employees.

As to the method of overtime distribution in the Air Brake Shop, Second Division Award 12013 is relevant:

"[T]he Carrier had every right to come to expect its practice . . . would continue without complaint. This Board finds it inconceivable to hold the Carrier liable for compensation for a practice it long regarded as legitimate given the acquiescence of the Organization."

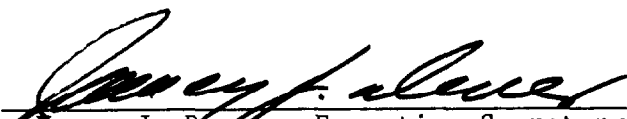
As to the Claimant's participation in overtime, it is only reasonable that, given his previous refusal record, he make it known in advance that he now wishes to share in overtime generally, even if not in every instance.

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 15th day of July 1992.