

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12886
Docket No. 12610
95-2-92-2-152

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen,
(A Division of TCIU
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(Norfolk Southern Railway Company (former
(Southern Railway Company)

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railroad Company and/or its Corporate Parent, the Norfolk Southern Corporation, violated the terms and conditions of the current Agreement on December 18 and 19, 1991 at John Sevier Train Yard, Knoxville, Tennessee when Carman A. J. Goddard was called and assigned overtime work when his name was not on the yard overtime board.
2. That accordingly, the Norfolk Southern Railroad Company and/or its Parent, the Norfolk Southern Corporation, now be ordered to provide the following relief to Carman B. J. Ellis; compensation in the amount of sixteen (16) hours pay at the overtime rate. We are also requesting that Carman Goddard be listed in the proper order on the yard overtime board and that the sixteen (16) hours that he worked be added to the thirty-five (35) he should have been charged with when his name was added."

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 employe 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 of hearing thereon.

On December 18 and 19, 1991, Claimant, Car Inspector B.J. Ellis, was on the train yard Overtime Board at the John Sevier Train Yard in Knoxville, Tennessee. While Carman A.J. Goddard should also have been on the train yard Overtime Board at that time (having been awarded a relief yard position on October 16, 1991), he had been erroneously retained on the repair track Overtime Board.

On each of the two dates in question, Mr. Goddard was called to fill a third shift train yard vacancy resulting from the illness of the incumbent. The Organization argues that the Company erred when it called an individual who was not on the proper board ahead of all others on the board to perform overtime work. It further maintains that at the time, Mr. Goddard had worked twenty-two hours on the rip track Overtime Board prior to working in the yard more than the six hours indicated by Carrier. (Claimant, Mr. Ellis, had worked twenty.) The Organization believes that Carrier did not make an effort to equalize overtime in accordance with Rule 10:

"DISTRIBUTION OF OVERTIME

Rule 10. When it becomes necessary for employees covered by this agreement to work overtime, they shall not be laid off during regular working 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.

Except for employees in "other departments", as referred to in Rule 6, holiday work shall not be considered as overtime within the meaning of this rule.

Running repair or other employees regularly receiving the benefit of holiday service shall not be considered in pro-ration of road service or overtime in other departments. This shall not prevent their being called for such service when other employees are not available."

This Board does not agree with Carrier that this claim as originally presented on the property differs from that placed before this Board. Thus, we do not dismiss the case for that alleged procedural defect. There is a dispute in fact, however, that makes a clear resolution of this dispute difficult. In filing its initial claim, the Organization alleged that prior to December 18, Mr. Goddard was shown as having fourteen hours on the Overtime Board and should have been credited with thirty-five hours. On June 5, 1992, Carrier stated that the parties had agreed in conference about Mr. Goddard's proper placement on the list. It maintains before this Board that he had six hours before December 18 and that after the two days in question, he had twenty-two. In its submission, however, the Organization continued to suggest that the hours were not correct and pointed to a March 11, 1992, letter in which it said that he had twenty-two hours on the rip track Overtime Board prior to working in the yard. Because the Organization, as the moving party, has the burden of resolving key disputes in fact and has failed to do so in this instance, that portion of the claim regarding Carman Goddard's proper placement on the list must be dismissed.

Because of this uncertainty over Mr. Goddard's hours at the point he was selected to work overtime, it is also difficult to address the Organization's argument in regard to the equalization of overtime. In general, however, we agree with Carrier that a rule such as Rule 10 requires that overtime is to be distributed as equally as possible over a reasonable period of time. Thus, any momentary inequities do not serve as a basis for alleging a violation of the rule if, within a reasonable period, equalization is achieved.

As to the fact that Mr. Goddard had not been placed officially on the proper list, it appears to this Board that Carrier treated him as though he had been when it selected him for the overtime work in the train yard. Thus, he was afforded his proper rights. Undoubtedly, Petitioner would have had a stronger claim for Mr. Goddard had he been denied overtime opportunities in the yard. Further, Carrier's treatment of Mr. Goddard did not place Mr. Ellis, the Claimant here, in a disadvantageous or less favorable position, since it was Mr. Goddard's right to be on the yard list as well. It would be punitive on the part of this Board to penalize Carrier for its oversight when, in principle, Mr. Ellis would suffer no real harm by Carrier's considering Mr. Goddard for such overtime work.

In the final analysis, however, because of uncertainty over Mr. Goddard's overtime hours, this Board is unable to determine whether he was the proper choice. In sum, the entire claim must be dismissed given the Organization's failure to resolve this basic dispute in fact.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.