

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12904
Docket No. 12726
95-2-93-2-34

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers, System Council No. 16
(
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"1. That in violation of the governing agreement, Rule 4(d) in particular, +40-ton Crane Operator M. E. Burgus was deprived of overtime compensation to which he was entitled, because of the actions of Carrier Supervisors at the West Burlington, Iowa Diesel Maintenance Facility.

2. That accordingly, the Burlington Northern Railroad Company should be directed to compensate +40-ton Crane Operator M. E. Burgus for eight hours at the double-time 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant is a +40-ton Crane Operator assigned to the second shift with hours of 4:00 P.M. to Midnight, Saturday and Sunday as rest days. On Friday, November 15, 1991 at approximately 2:00 P.M., the Claimant was offered and accepted overtime work on Saturday, November 16 from 7:00 A.M. to 3:00 P.M. During the course of the second shift on Friday, November 15, the need arose for a +40-ton Crane Operator to work from 12 Midnight to 7:00 A.M., that is, consecutive to the Claimant's regular shift. He was asked to accept this overtime assignment, and he performed it.

According to the Carrier, the Foreman on duty for the 12 Midnight to 7:00 A.M. assignment only learned at the last moment of the Claimant's further assignment commencing at 7:00 A.M. Saturday. He consulted with the General Foreman on the matter, and it was determined not to permit the Claimant to work the previously scheduled 7:00 A.M. to 3:00 P.M. overtime.

The Carrier defends its action on the basis of safety, referring to the hazard of a Crane Operator working a third consecutive work shift. Reference is made to a memorandum circulated several months earlier from the Shop Superintendent to "All Local Chairman" and "All Supervisors." Referring to situations in which employees are scheduled beyond 17 hours of continuous service, the memorandum stated:

"Due to Safety and Rules factors, that practice [working more than 17 consecutive hours] will not be allowed in this Shop. This will [be] effective upon receipt of this letter."

The Organization argues that this memorandum is not encompassed in any Rule or other Agreement and thus is not of a binding nature. In addition, the Organization cites Rule 4(d) which reads as follows:

"(d) An employee notified to work a full shift on his rest days or on holidays, or an employee called to take the place of such employee, will be allowed to complete the shift unless relieved at his own request."

The Board recognizes that the Carrier's "17-hour memorandum" is not a mutually agreed document. Nevertheless, the Board finds the Carrier retains the authority to determine the conditions under which employees can work safely, and working beyond 16 consecutive hours reasonably constitutes a safety hazard, especially when working with other employees is involved. There are obvious emergency exceptions to this. The memorandum, however, is an assurance that employees will not be treated in a disparate manner.

As to Rule 4(d) the Carrier correctly points out that this applies to work on "rest days or on holidays." In this instance, the Claimant's first rest day did not commence until the start of what would have been his regular shift at 4:00 P.M. Thus, whatever other meaning the Rule may or may not have, it is not applicable here.

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AWARD

Claim denied.

ORDER

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 16th day of August 1995.