

Form I

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13136

Docket No. 12920

97-2-94-2-76

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

- 1. That the Carrier violated the intent, and purpose of Rules 3, 4, 7, & 8 of the controlling Agreement, as amended, on May 23, 1993 whenever Carman S.R. Christian was prohibited from accepting an overtime call account sixteen (16) hour work restriction imposed by the Carrier.**
- 2. That the Carrier be ordered to recompense Carman S. R. Christian that amount of eight (8) hours, at the time and one-half Carmen rate of pay in effect on May 23, 1993."**

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 regularly assigned Carman at the Carrier's Cincinnati, (Queensgate) Ohio, car repair and inspection facility. On May 22, 1993, he worked the second shift at the time and one-half rate of pay and then worked his regular third shift. The Claimant was at the top of the overtime board for the first shift on May 23, 1993, but the Carrier refused to allow him to work the shift because he had been on duty for 16 consecutive hours. In the Carrier's opinion, if the Claimant was allowed to work 24 consecutive hours this would have constituted a safety risk to him and his fellow employees.

The Organization contends that Carmen are not covered by the Hours of Service Act and the Carrier did not have the right to unilaterally impose restrictions on the hours they are permitted to work where the Agreement imposes no such restrictions. Therefore, according to the Organization, the Carrier had no right to refuse to allow the Claimant to work the first shift on May 23, 1993, for which he would have been compensated at the overtime rate of pay.

It is well established in the rail industry that a Carrier has the right to promulgate rules for the safety of its employees absent a legal or contractual proscription. In the instant case, the Agreement did not prohibit the Carrier from restricting Carmen from working more than 16 consecutive hours.

Rules 3, 4 and 7, cited by the Organization in support of this claim, provide the manner in which employees are to be compensated when they work overtime. Rule 8 requires that overtime be distributed equally among employees as near as possible. However, neither of these Rules grants Carmen the contractual right to work overtime after being on duty for 16 consecutive hours.

The work restriction that the Carrier imposed on Carmen was not arbitrary, capricious or unreasonable. The Carrier concluded that allowing Carmen to work continuously for 24 hours posed a safety risk. That determination was not unfounded. Moreover, the Claimant was placed on the top of the overtime board on May 23, 1993, so that he was allowed to work the next overtime shift for which he was rested.

The Carrier's decision to limit the consecutive hours that Carmen are allowed to work did not violate any Rule in their Agreement and was not arbitrary, capricious or unreasonable. Therefore, the instant claim must be denied.

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 30th day of July 1997.