Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13348
Docket No. 13215
98-2-96-2-125

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

(1) That the Louisville and Nashville Railroad Company, (now a part of CSX Transportation and hereinafter referred to as Carrier) violated the controlling agreement rights of Nashville, Tennessee Carman C. W. Lovvorn, (hereinafter referred to as Claimant) specifically but not limited to Appendix 'B' and Appendix 'D', when Carrier failed to call him from the Nashville Project Shop Miscellaneous Overtime Board for overtime work for which he stood qualified and available to work.

(2) Carrier should now be ordered to compensate claimant eight (8) hours Lead Carman's pay at time and one half rate of pay each day for March 11, 18, 25, and April 1, 1995 when carrier failed to call Claimant from the Nashville Project Shop Miscellaneous Overtime Board for overtime work for which he stood qualified and available to work."

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.

This claim involves the manner in which overtime is assigned at the Nashville Project Shop in Nashville, Tennessee. On the four Saturday claim dates, Claimant was on the Miscellaneous Overtime Board and Carrier called Material Coordinator C. R. Stell to work the Material Coordinator position rather than make the assignment from the Miscellaneous Overtime Board. The record is clear that Claimant had performed the work of a Material Coordinator in 1994. It is also undisputed that the program at the Nashville Project Shop changes from time to time, which can involve a different series of cars being built at different times involving the Carrier's use of different vendors.

The Organization contends that Claimant was entitled to be assigned the overtime work due to his position on the Miscellaneous Overtime Board under the following language of Appendix "B":

> "3. In submitting application for assignment to either the Sunday-holiday or miscellaneous overtime board, the employe will protect whatever assignment his turn on the overtime board calls for, if qualified.
>
> 4. Upon being placed on the overtime board, an employe will stand for service and be rotated in accordance with his standing on the overtime board, as provided in this agreement. . . ."

The Organization asserts that Carrier settled a similar claim locally when Claimant was assigned overtime as a Material Coordinator in 1994 rather than the Miscellaneous Overtime Board employee, and argues that such settlement is precedent for this case. The Organization further alleges that Claimant was qualified for the assignment based upon his having held the same position previously. It relies upon the language of Appendix "B" Paragraph 18 in support of its remedy request.

Carrier contended on the property that there has been a long-standing consistently applied practice at the Nashville Project Shop that the Lead Carman currently holding the position requiring overtime is first offered the opportunity to work, because he is most familiar with the material requirements for the specific project being worked on, in exchange for which he defers placing his name on the Miscellaneous Overtime Board. Carrier noted that Claimant had benefitted in the past from such practice. Carrier also argues that, due to his unfamiliarity with the project requirements on the claim dates, Claimant was not qualified to perform the overtime work in issue, citing Second Division Award 7376, and Third Division Awards 22462 and 22892. Finally, Carrier asserts that a local level settlement for an undisclosed reason is not precedent-setting.

A careful review of the record convinces the Board that this claim must be denied. While the Organization voiced its disagreement on the property with Carrier's asserted practice of filling overtime by using the incumbent of the position rather than the Miscellaneous Overtime Board, we need not decide whether this practice is in compliance with the Agreement. In this case, the Organization failed to meet its burden of proof. It neither challenged the qualification requirements of the position assigned the overtime work in issue, nor rebutted Carrier's statements on the property that Claimant was not qualified to perform the Material Coordinator job on the project underway at the time. Instead of responding to Carrier's assertions concerning Claimant's lack of qualifications for this project, the Organization continually relied upon Claimant's performance on the position in the past when the project he had worked on had admittedly different material requirements. As noted above, it is undisputed that projects change as do their requirements, and it stands to reason that the employee holding the position at the time would be the person most familiar with the program material requirements of the current project. Absent proof that Claimant was familiar with and qualified to perform the material requirements of the project underway on the claim dates, the Organization failed to establish that he was qualified for the assignment under the language of Appendix "B."

Accordingly, the 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 24th day of November 1998.