

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13432

Docket No. 13343

99-2-98-2-29

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Louisville &
(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 Louisville, KY, Osborn Shop Carman B. W. Hadley, (hereinafter referred to as Claimant) specifically, but not limited to Rule 12 and Appendix “B” when Carrier failed to allow Claimant his contractual rights to overtime work on a third shift Highrail Truck Job vacancy which was erroneously filled by an employee called from the wrong overtime board.
2. Carrier should now be ordered to compensate Claimant for eight (8) hours pay at time and one half rate account of Claimant erroneously not being called from the Shop Miscellaneous Overtime Board for work for which he was available, qualified, and stood first out of September 28, 1996, to perform.”

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.

There is no dispute in facts between the parties relative to this claim. At Louisville, Kentucky, two Overtime Boards exist for Carmen - one for the shops and one for the yards.

A vacancy occurred on the 11:00 PM shift and a Lead Carman (a common practice as far as this Board is concerned) called the first out Carman off the wrong Overtime Board. Claimant stood first out for a call on the Board that should have been called.

Carrier's position is that because the regulation of the Overtime Board is the Carmen's responsibility, and since a Carman historically at this point called another Carman, the Carrier is not responsible for the error.

The Board does not agree. The Carman who called from the wrong board is a Lead Carman. He receives differential compensation for his supervisory responsibilities. If the Lead Carman errs in those duties, it is as though the Carrier erred. The Lead Carman is an extension of management.

Both parties furnished an Award or two in support of their respective positions. In Second Division Award 12343, involving another Carrier, the claim was sustained at the pro rata rate. In that dispute, the Board held that if the Lead Carman was designated by the Carrier to call from the overtime list, then he was indeed acting as an extension of management.

The Carrier cited Public Law Board No. 4170, Award 14 involving another Carrier. The facts are not on all fours with the facts in this case. The same holds for Second Division Award 13303 involving the former Chesapeake and Ohio Railway Company.

In Second Division Award 13356, also involving the former Chesapeake and Ohio Railway Company, the merits were sustained, i.e., a Carman was called from an incorrect Board, but no lost earnings were awarded based solely upon the Organization's failure to prove a violation of the Shared Overtime Rule.

In this dispute, involving the Agreement that exists on the former Louisville and Nashville Railroad, not only is there the standard Shared Overtime Rule, but there is also an agreed-to method of establishing Overtime Boards, including a remedy clause covering an employee who is not called for overtime he stood for.

Item 18 of Appendix B reads, in pertinent part:

“18. An employee who through error or oversight is not called for work for which he stands on the overtime board, when he is available and qualified for such work, will be paid the amount he would have earned had he been called and used. . . .”

When there exists a remedy in the Rule, the Board has no authority to levy a monetary settlement that differs from the parties agreed-to remedy.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of June 1999.