

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13453

Docket No. 13370

99-2-98-2-57

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

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

PARTIES TO DISPUTE: (

(Union Pacific Railway Company

STATEMENT OF CLAIM:

“1. The Carrier was in violation of, but not limited to, Rule 1, 6, and 7 of the schedule of Agreement at the Omaha Shop/Fox Park in June of 1997 when it used the Claimant as a company rider on a passenger train and did not compensate him for overtime hours that he was entitled to.

2. The Carrier shall compensate Stanley Nowicki the Claimant for the overtime pay he was entitled to for each day of the trip as follows: cumulative 45 hours and 20 minutes at time and one half, and 8 hours at double time, for the dates of June 9 through 15, 1997.”

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.

A claim was submitted to the Director of Administration, Omaha Passenger Car Shop, on July 29, 1997 on behalf of Carman Stanley Nowicki by the Local Chairman of the Organization. This claim was denied by the Carrier. Absent settlement of the claim on property it was docketed before the Second Division of the National Railroad Adjustment Board for final adjudication.

A threshold issue in this case involves Rule 35 of the schedule Agreement which states the following in pertinent part:

"Rule 35 Time Limit on Claims and Grievances.

All claims or grievances shall be handled as follows:

(A) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim is based"

With respect to the claim filed on his behalf Carman Nowicki wrote the following to the Carrier: "I was told how I would be paid. I would get my daily wages and if I worked anything over my regular hours I'd be paid overtime. I have not submitted a time claim, --- nor am I part of any time claim submitted for...(any) wages (on my behalf)"

The Board will not rule here that the Organization may not have a right to file a claim on behalf of a member of the collective bargaining unit if it believes that there has been a violation of the Agreement by the Carrier since the language of Rule 35(A) uses the language ". . . by or on behalf of the employee involved"

The circumstances under which the Claimant worked the dates in question in this case were somewhat unique since they involved his volunteering to ride a train rather than work in the shop. The Claimant was paid his regular wages while on this trip and on a number of days was also paid for call-ins. This is not denied by any party to this dispute. In the instant case, however, the employee not only denies that he is party to any claim, but he also denies, in effect, having worked during the hours for which the Organization is seeking relief. Thus the claim must be denied, therefore, on the basis

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of insufficient evidence. The Organization, as moving party in the instant claim, has not shown that it has borne its burden of proof.

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 25th day of August 1999.