

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13696

Docket No. 13500

03-2-99-2-102

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 29.2 when they failed to advise the local committee as to the number of employees required to work overtime as set forth in this rule.
2. That according, the Springfield Terminal Railway Company be ordered to compensate Carman Herman O. Dufresne in the amount of eight (8) hours pay at the overtime rate. This the amount he would have earned had the carrier not breached the agreement.”

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.

On March 4, 1998, the Carrier assigned road truck 2285 to go from East Deerfield, Massachusetts, to Rotterdam Junction, New York, to repair two defective freight cars. That assignment resulted in eight hours of overtime for the two Carmen assigned to that road truck.

The employees on road truck 2285 who were given the overtime assignment had been working since 7:00 A.M. The assignment to Rotterdam Junction was made at 12:25 P.M. At the time the assignment to go to Rotterdam Junction was made, the road truck 2285 employees were right at the East Deerfield Yard. The drive from East Deerfield to Rotterdam is an approximate six hour round trip.

The Claimant is a Carman/Roadman at the East Deerfield Car Shop. Claim was filed on the Claimant's behalf asserting that the assignment to Rotterdam Junction which resulted in overtime was made without first contacting the local committee for the assignment of the overtime. According to the Organization, Carmen with the least amount of overtime (in this case, the Claimant) should have been used from the overtime list for the assignment.

The relevant Rules provide:

"29.2 When it becomes necessary for employees to work overtime, the Local Official will advise the Local Committee as to the number of employees required. The Local Committee will then designate the employees to perform the work, subject to the provisions of paragraph 29.5 of this agreement.

* * *

29.5 A record will be kept of overtime worked and employees will be called in order to distribute the overtime equally. Such record will, once a week, be provided by the Carrier to the Local Committee on a form to be provided by the Organization."

Rule 29.5 seeks to equally distribute overtime which is accomplished through overtime assignments being made by the local committee under Rule 29.2. In this case, we find the letter and the spirit of the equalization procedure were violated.

While road truck 2285 was on assignment, the Carrier made a new assignment to that crew involving six hours of driving which was then to be followed by further work when there were only 2.5 hours left in those employees' shift. Therefore, when the new work assignment was made and particularly given the six hour travel time the Carrier had to know that there would be overtime. Rule 29.2 is clear "When it becomes necessary for employees to work overtime, the Local Official will advise the Local Committee as to the number of employees required." That mandatory language ("when," "will") leaves little to discretion. The Carrier did not contact the local committee as required by Rule 29.2. The Carrier therefore violated that Rule.

This is not a case where the overtime is a natural extension of the road truck employees' original assignment which work those employees were unable to complete during their regular work shift. We agree with the Carrier that it would be onerous and unreasonable to require the Carrier to bring in employees from the road and assign others for overtime for work that should have been completed during the regular work shift or was otherwise a continuation of the road truck employees' original assignment. The Organization also agrees with that position ("... we do not dispute the customary practice that once out on the road performing work, the roadmen would not be required to return to the shop to be re-crewed because it involved overtime."). Rather, this is a case where a new work assignment was made late in the road truck employees' shift when the road truck was right at the East Deerfield yard and that assignment involved a six hour driving requirement followed by further work. Therefore, the Carrier had to know that there would be overtime for the new assignment and it made the assignment without following the negotiated equalization provisions.

These cases are obviously fact specific. Given these particular facts, to allow the Carrier to avoid the clear language in Rule 29.2 with this new work assignment to a road truck crew right at the East Deerfield Yard which the employees so clearly could not have completed prior to the end of their shift would make the language in that Rule a nullity and would permit the Carrier to circumvent the clear obligation found in Rules 29.2 and 29.5 for overtime equalization.

The Carrier's cited authority does not change the result. Second Division Award 13187 involved a situation where a crew was dispatched to a derailment and continued to perform the work on an overtime basis without contact made to the local committee. The Board denied the claim and reasoned that the Carrier was not obligated to contact the local committee for the assignment of overtime to other employees because ".

.. Carrier was entitled to have its assigned crew complete the task 'to meet its service requirements' under Rule 4", which the Board referred to as "continuation of work provisions." The assignment in this case to Rotterdam Junction was not a "continuation of work." The road truck crew was right at the East Deerfield Yard nearing the end of their shift and a new assignment was made which the employees clearly could not have completed without performing substantial overtime. The new assignment should have first gone through the local committee as the parties agreed in Rule 29.2. Similarly, Second Division Award 13226 (which was followed in Second Division Award 13227) was decided on the basis that "... the work at issue was performed at a point where Carmen were not employed ... [and] a number of claims that had been denied in the past on that basis" which was not disputed by the Organization. Those are not the facts in this case.

The claim will therefore be sustained.

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 31st day of January, 2003.