

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13729

Docket No. 13570

03-2-00-2-49

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. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 29 when they failed to contact the Local Committee to designate the proper employee to perform work that involved overtime.**
- 2. That according, the Springfield Terminal Railway Company be ordered to compensate Wilfred L. Bennett in the amount of five (5) hours at the overtime rate. This the amount he would have earned had the Carrier lived up to 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 June 30, 1999, during lunch break at around noon, Assistant Manager M. Lozano assigned Carman/Roadman L. S. McCommic to travel after the break from Waterville to three locations (North Maine Junction, Hammond Street and Orrington) with the road repair truck to repair freight cars. McCommic's shift that day was from 7:00 A.M. to 3:00 P.M. As a result of the assignment, McCommic did not leave Waterville until approximately 1:00 P.M. The farthest point of this assignment was Orrington, which is approximately 65 miles from Waterville. McCommic did not return until 8:00 P.M., thereby incurring overtime.

The Claimant is a Carman/Roadman at Waterville. At the time of the assignment of the work to McCommic, the Claimant had less accumulated overtime than McCommic. This claim asserts that the local committee was not contacted to designate the proper employee to perform the work and, therefore, the Claimant should have received the overtime assignment rather than McCommic.

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."

We recently decided a similar dispute in Second Division Award 13696. There, we stated, in pertinent part:

"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.

* * *

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."

For purposes of this case, the relevant language from Award 13696 is "... when the new work assignment was made ... the Carrier had to know that there would be overtime." The clear concepts behind Rules 29.2 and 29.5 are to equalize overtime and to follow a procedure to achieve that end. It is not the function of the Board to get involved in every overtime assignment made by the Carrier. Thus, when the Carrier knows (or should have known) that an assignment will result in overtime, it must follow the equalization provisions in Rules 29.2 and 29.5. If there is any doubt on the Carrier's part, it should err on the side of caution and contact the local committee under Rule 29.2. Failure to take that step will, in the event of an improper overtime assignment, result in a double overtime payment - one to the employee who performed the work and the second to the employee who should have performed the work.

Turning to the facts of this case, clearly, the Carrier knew or should have known that the assignment to McCommic would result in overtime. McCommic was to go off duty at 3:00 P.M. Without contact to the local committee, an assignment was made to

McCommic at noon which required him to prepare the road truck, travel to three locations (the most distant being 65 miles from Waterville) and perform the work at those locations. There is no way that McCommic could have performed the assignment by the end of his shift. The fact that McCommic did not return until 8:00 P.M. underscores the conclusion that the Carrier knew or should have known that the assignment in this case would result in overtime.

By failing to follow the provisions of Rules 29.2 and 29.5, the Carrier clearly violated the Agreement. We shall therefore sustain the claim. As a remedy, the Claimant shall be compensated at the overtime rate for the lost overtime opportunity.

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 30th day of June 2003.