

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13791
Docket No. 13685
03-2-03-2-6**

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“That The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 10 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association and Aerospace Workers (hereinafter referred to as the “Employees”) when it wrongfully and unjustly denied Kansas City, Kansas Machinist Marion E. Deragowski (hereinafter referred to as the “Claimant”) the opportunity to work overtime.

Accordingly, we request that the Carrier pay the Claimant for each and every opportunity that he was improperly denied the opportunity to work overtime since November 9, 2001.”

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 or about November 9, 2001 the Claimant was informed by the Carrier that he would no longer be called for overtime due to his physical limitations. The Claimant's physician had, in a report dated January 12, 1998 indicated that the Claimant was released to return to full duty with the Carrier. He would not, however, be allowed to operate moving vehicles for an indefinite period of time.

The record reflects that up until November 2001, the Carrier accommodated the Claimant's restriction and he was assigned tasks that did not require him to operate any moving vehicles, in particular locomotives.

The Organization argues that: (1) The Claimant has worked overtime on numerous occasions notwithstanding his physician's restrictions; (2) The Claimant can perform all tasks assigned to him; (3) The Claimant's restrictions have not created a problem in the past; (4) A past practice exists because the Carrier has not restricted the Claimant's overtime in the past; and (5) The movement of locomotives is not within the Employees' scope of work.

The Rule in question, Rule 10 of the Controlling Agreement reads in pertinent part:

"Overtime will be distributed equally among the employes, who are qualified to handle the work, of each shift by crafts." (Emphasis added)

The record reflects that the Carrier has accommodated the Claimant's restrictions in the past although through what methods is not revealed. The record further indicates that Machinists are subject to moving locomotives or assisting in the movement of locomotives during overtime assignments.

The Organization questions why the Carrier has removed the Claimant from overtime distribution at this point and asserts that the Claimant should be given the opportunity to work overtime and paid for overtime lost since November 9, 2001.

It is well established that past practice does not modify unambiguous contract language (Second Division Award 10670 and Third Division Award 30984). It is uncontested that the Claimant cannot, with his restrictions operate locomotives as the overtime assignments require. While the Carrier has accommodated the Claimant's restrictions in the past, it was not contractually, under the circumstances of this case compelled to do so. Under the clear and concise language of Rule 10 of the Controlling Agreement, the Board has no alternative but to deny the claim.

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 11th day of March 2004.