

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13823

Docket No. 13711

05-2-03-2-46

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

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PARTIES TO DISPUTE: (

(Canadian National Railway (Grand Trunk District)

STATEMENT OF CLAIM:

- “1. That, the Grand Trunk Western Railroad Company/CN violated the terms and conditions of the current Agreement when Carman A. J. Worm was not permitted to complete an overtime assignment of eight (8) hours on June 7, 2001 on the 2300 to 0700 shift, as he was sent home after only four (4) hours of service on this assignment due to being pressed into service on his shift by the Company as a Utility Carman. He was also unable to fill another eight (8) hour overtime assignment on June 8, 2001 because of not having ten (10) hours of rest after twelve (12) hours of service.
2. That accordingly, the Grand Trunk Western Railroad Company/CN now be ordered to provide the following relief: That Carman A. J. Worm now be compensated for an additional four (4) hours pay at the rate of time and one half, the Overtime Rate of Pay for June 7, 2001 and eight (8) hours of pay at the Overtime Rate of Pay for June 8, 2001 in effect on these dates for these violations.”

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.

At the time this dispute arose, the Claimant was assigned to inspect, repair and perform other related duties to the Carrier's freight cars and operation of the Carrier's facilities at Battle Creek, Michigan. The Claimant's assigned hours were on the second shift (1500-2300), Monday through Friday.

After completing his eight hour assignment on June 7, 2001, the Claimant was pressed into service as a Utility Employee and called for an eight hour overtime assignment on the third shift. The Carrier then determined that the Claimant could not complete this overtime assignment due to Hours of Service restrictions and sent The Claimant home after working four hours of the overtime assignment. The Claimant was not compensated for the remaining four hours of the overtime assignment.

The Claimant was called for another overtime assignment on June 8, 2001, but was not permitted to fill that assignment after it was determined that he had not had ten hours of rest after 12 hours of previous service, as required by Hours of Service restrictions.

This claim followed seeking four hours of pay at the overtime rate for June 7, 2001 and eight hours of similar pay for June 8, 2001.

The crux of this dispute is Rule 8:

"DISTRIBUTION OF OVERTIME - RULE 8

When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time. Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

The Rule's only obligation is to equalize overtime. In this circumstance, the Carrier has shown why the Claimant could not be used for overtime on the disputed dates — reasons dictated by Hours of Service restrictions. The Organization has not shown that, in the end and over the relevant period of time, overtime was not equalized and that the Claimant did not get his share. The Organization's burden has not been carried. This claim must therefore be denied.

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 1st day of April 2005.