

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13864
Docket No. 13687
05-2-03-2-8

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“That the Kansas City Southern Railway Company (hereinafter referred to as the “Carrier”) violated Rule 8 of the Controlling Agreement, effective April 1, 1980, as amended, between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly denied Machinist F. R. Peters (hereinafter referred to as the “Claimant”) the opportunity to work overtime because he was eligible for double time.

Accordingly, we request that for this improper action, the Claimant be compensated for eight hours at double his pro rata rate of pay.”

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.

As background, there is no dispute on the facts in this record. The dispute occurred on Saturday, August 18, 2001. The Claimant was first out on the call list maintained on the property at Shreveport, Louisiana to work overtime. The Claimant had fully worked his regular week. He had already been called for overtime on the first of his rest days and been paid at the time and one-half rate. He was next out on the overtime list and that would have entitled him to double time under Rule 7. The Carrier ran around the Claimant on August 18, 2001, to select another machinist who would only have to be paid at the time and one half rate and did not call the Claimant for overtime.

The Organization points to Rule 7(d) which states that "on the second rest day of his assignment shall be paid at double the basic straight time rate" provided he had fulfilled his work hours. It points to Rule 8, "Distribution of Overtime" which states:

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

The Organization notes that until the "recent arrival at the facility" of Supervisor Reynolds, the individual at the top of the overtime list was the first out for overtime. It argues that the Carrier has failed to follow Rule 8(b) by denying the eligible first out employee on the list his rightful overtime to avoid a double time payment. The Organization argues that there is no Rule in the Agreement that permits the Carrier to run around the Claimant to avoid a double time payment.

The Carrier has steadfastly denied violating the Agreement. It maintains that it called employees to work that distributed overtime equally in full compliance with

Rule 8. The Carrier does not deny that the Claimant was next out on the overtime list that was compiled on the property. Nor does it deny that he was not permitted to work the overtime assignment because he would have been due double time. What the Carrier asserts is that it did not violate any Agreement Rule, in that the "process for distributing overtime in Shreveport is, all employees eligible for time and a half are called and when time and a half is exhausted, we call double time."

The Board has fully and carefully reviewed the full record, Awards presented and facts at bar. The Organization has the burden of proving a violation of the Rules. Nothing in Rule 8 requires the Carrier to call the Claimant from the rotating overtime list in a specific first out order of precedence as argued by the Organization. While there is an implicit argument of practice, there is no proof that in any prior instance the order of the first in and first out has always been followed, only that "record will be kept . . . with the purpose in view of distributing the overtime equally." We find no language requiring the Carrier to distribute overtime to the employee next up for overtime. What the language clearly states is that the Carrier must attempt to distribute overtime equally. There is no proof in this record that the Claimant was not obtaining an equal distribution of the overtime available. There is no proof that the Carrier failed to maintain a record to demonstrate over time that it was complying with the intent of the Rule.

The Board finds a lack of proof for a violation of the Agreement and in particular, Rule 8. The Organization has not even argued that the Claimant was not getting his share of overtime available. The Organization has failed to provide evidence that because the Claimant was available the Carrier was required to use him for overtime at that particular call. There has been no demonstration of any Rule language which was violated. The claim must therefore be denied.

AWARD

Claim denied.

Form 1
Page 4

Award No. 13864
Docket No. 13687
05-2-03-2-8

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 7th day of September 2005.