

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13932

Docket No. 13795

07-2-06-2-9

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCU
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 29.2 and 29.5 when they arbitrarily allowed Carman William Reinsborough to work overtime on the road, instead of allowing Carman Tim Crousanas to perform these duties.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Timothy Crousanas four (4) hours and 45 minutes at the rate of time and one-half for the willful violation of the above noted rules.”

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.

The facts of the case are that on April 8, 2005, Carman Reinsborough was assigned to work the hours of 7:00 A.M. to 3:00 P.M. At 9:00 A.M. he was sent to Riley's on a road truck job by his Supervisor. Reinsborough was instructed to stay at the site until the job was completed. Reinsborough worked until 7:45 P.M. and was paid an additional four hours and 45 minutes at the time and one-half rate.

It is the Organization's position that the Carrier improperly used Carman Reinsborough to fulfill an assignment which it knew or should have known would entail overtime rather than contacting the local committee for the assignment of overtime. Claim was filed on the Claimant's behalf because he should have been used since he was in line on the overtime call list. It argues that it was apparent that overtime would be required because Reinsborough specifically asked his Supervisor whether to be back at 3:00 P.M. and was instructed to work until dark or when the job was complete. It states that in April it does not get dark until approximately 8:00 P.M. Therefore, it is clear that the Supervisor knew the work could not be completed by the end of Reinsborough's shift and would require overtime. It states that Rules 29.2 and 29.5 were violated which state the following:

"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."

It further argues that on property Second Division Award Nos. 13696 and 13729 support its position.

It is the position of the Carrier that both Claimant and Reinsborough were working the same shift. Reinsborough is senior to Claimant and Rule 12.4(b) states that: "In the daily assignment of work to employees awarded positions under this Rule, fitness, ability, and qualifications being equal, the preference of senior employee will be considered." According to it, the Supervisor adhered to this rule

when he sent the senior employee on this assignment rather than Claimant and any reference to Rule 29 and the overtime call list is irrelevant, since the work was assigned at the beginning of Reinsborough's shift at 9:00 A.M.

It further argues that that when Reinsborough specifically asked if he was "to be back at 3:00 P.M. due to limited overtime" and the Supervisor "instructed him to stay until dark or until the job was done" the Organization has incorrectly assumed that this meant that the Supervisor "must have felt that overtime was required". That is an unsubstantiated presumption on the part of the Organization. The fact the employee inquired as to whether he would have permission to stay on overtime and the Supervisor gave him that permission does not mean that thought overtime would be required to complete the assignment.

Lastly, it argues that the aforementioned Awards relied upon by the Organization actually support a denial in the instant dispute because this matter does not involve the assignment of new work during the middle of Reinsborough's shift, as was the case in the two previous Awards.

The Board has thoroughly reviewed the record and finds that the relevant rules in dispute are Rule 29.5 which seeks to equally distribute overtime which is accomplished through overtime assignments being made by the local committee in accordance with Rule 29.2. We are not persuaded by the Carrier's secondary argument that Rule 12.4(b) takes precedence in this instance. Rule 12.4(b) pertains to work assignments and does not override Rules 29.5 and 29.2 in the distribution of overtime.

The Carrier is correct when it argues that Awards 13696 and 13729 are different than this case in that in both of those Awards the Carrier assigned additional new work during the middle of a shift when it knew or should have known that there would be overtime. The difference, however, in this instance is only in the fact that the job assignment was made early on in the shift (two hours after the start time) rather than midway. We agree with the Carrier and Award 13696 that it would be unreasonable for the Carrier to be required to bring in employees from the road and assign others (re-crew) for overtime for work that was continuation of an assignment. However, that is not the question in this instance, the crux of this dispute is whether or not the Carrier had enough information to know or believe that it was likely there would be overtime. In Award 13729 the Board discussed the calling of overtime and on page three it stated the following:

"...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 who should have performed the work."

Turning to the facts of record, all we know is that Claimant worked four hours and 45 minutes overtime. In the absence of any evidence to support the Carrier's affirmative defense, that it did not have enough information to determine overtime was necessary, the Board has no alternative but to conclude that the Carrier knew or should have known there was a reasonable expectation of overtime. In fact in this instance the Carrier took the position that it did not even have to consider the matter. This is evidenced by its response to the Organization of June 7, 2005 wherein it stated the following:

"...Nine o'clock in the morning is close enough to the start of the shift to exempt a manager from giving consideration to whether or not an assignment will go into overtime in the assignment of work."

The Board disagrees with the aforementioned and determines that the Carrier either knew or should have known that the assignment in this case would result in overtime. The Carrier violated the Agreement when it failed to follow the provisions of Rules 29.2 and 29.5 in accordance with property precedence (Awards 13696 and 13729). The Claim is sustained as presented.

AWARD

Claim sustained.

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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 28th day of August 2007.