

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13962
Docket No. 13851
08-2-NRAB-00002-080003**

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

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

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 31.1 and 29.2, when they allowed or otherwise ordered a junior employee to perform re-railing work at Riley’s, ME on July 24, 2006.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Oscar Gerry in the amount of five (5) hours at the high rate and 7.5 hours at the overtime rate. This is the amount he would have earned had the Carrier not violated our 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 July 24, 2006, at 11:00 a.m. the Carrier assigned Carmen Arsenault and Paston to perform the re-railing work of Locomotive (503) and SHPX 200959 on Track 23 at Rileys, ME. Subsequently, it required both employees to return to the same site and re-rail Locomotive (503) on Track 7. The re-railing work was completed at 11:30 p.m.

It is the Organization's position that the Carrier violated Rules 29.2 and 31.1 on July 24th when it failed to contact the Local Committee whose duty was to call the required employees for the subject overtime. Because the Carrier did not notify the Local Committee of its need for overtime Claimant was not called which denied him the opportunity to earn overtime for the re-railing work at Rileys, ME. The two aforementioned Rules are provided in pertinent part as follows:

"Rule 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."

"Rule 31.1 The Carrier will establish the position of Carman Roadman whose assigned duties will include road work in addition to the duties described in Rule 2 of this Agreement."

It is the position of the Carrier that the Carmen called for the overtime were ahead of the Claimant on the applicable overtime list and it was correct in determining that the work at issue would result in overtime and it properly distributed the overtime. It also argues that even if it had violated the Agreement (which it states it did not) the old adage "no harm, no foul" applies in this instance as the Claimant was not the proper employee to call, therefore, the claim should be denied.

The Board has thoroughly reviewed the record and finds that contrary to the Organization's assertions Rule 31.1 is not relevant in the present dispute because all the Carmen in Rigby hold Carman Roadmen positions and were equally qualified for the work. The question at issue is whether or not the Carrier complied with Rule 29.2. Rule 29.2 specifically outlines the instructions for the filling of overtime when it states: "...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...” (Underling our emphasis). It is clear that on July 24, 2006, the Carrier anticipated there would be overtime work and it did not advise the Local Committee as to how many employees would be required, but instead chose to fill the overtime with no input from the Organization. Carrier’s unilateral action was in violation of Rule 29.2 which mandates that the Local Committee should have designated who should have been called. Carrier’s argument “no harm, no foul” is not persuasive and if followed would make the language in that Rule a nullity allowing the Carrier to circumvent the negotiator’s intent. In accordance with property precedent Second Division Awards 13696, 13729 and 13932 the remedy for the violation will be that the Claimant shall be compensated at the overtime rate for the lost overtime opportunity. The claim is sustained as presented.

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 23rd day of October 2008.