

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13987
Docket No. 13861
08-2-NRAB-00002-080014**

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 TCU
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 29.2 and 29.5, when they allowed or otherwise ordered Carman Bud Leveille to perform work in Lawrence, MA instead of Carman Richard Sibley, who was first out on the overtime list.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Richard Sibley in the amount of two (2) hours at the overtime rate and one (1) hour at preparatory time. This is the amount he would have earned had the Carrier not violated the Agreement.**
- 3. The Carrier is in violation of the time clause contained in 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.

The record indicates that on September 29, 2006, the Carrier required Carman Leveille to go to Lawrence, MA, prior to his regular shift which began at 7:00 a.m. with Road Truck 1460 to pick up brake shoes and return to East Deerfield, MA.

It is the Organization's position that the Local Officer failed to call the Local Committee and notify it as to the number of employees required after which the Local Committee should have called the requisite number of employees to perform the work rather than him sending Carman Leveille to pick up the brake shoes. Claimant, the lowest man on the overtime list, should have been contacted to be called in on overtime.

Additionally, the Organization alleges that the Carrier committed various procedural errors. It asserts that the Carrier's denial of the claim was untimely as it was sent to a Vestal, NY, address rather than the correct Apalachin, NY, address. It further argues that the Carrier's denial was not sufficient as it lacked any reasons for disallowance. Based upon the aforementioned facts it argues that the Claim should be sustained.

It is the position of the Carrier that it did not violate time limits of the Agreement. It argues that the Claim was dated October 21, 2006 and it was declined by Superintendent Peterson on November 2, 2006 and that denial was hand delivered to the Claimant immediately after it was drafted as evidenced by the Claimant's signature. It further states that a copy of the denial was also mailed to the Vestal, NY address listed on the Organization's letterhead and the Organization had 60 days from its receipt of Peterson's denial, to appeal the Claim, therefore, its appeal of February 3, 2007 was untimely.

On the merits the Carrier argues in its Submission that numerous arbitration Awards have held that a standard shop craft overtime Rule, such as its Rule 29, is not violated as long as the overtime in question is distributed equally, over a reasonable period of time. It stated that the Organization has not proven that it was distributing its overtime unequally over any period of time, let alone on the particular date in question. In conclusion, the Carrier states that the Organization

has not met its burden of proof that a violation of the Agreement occurred and it requests that the claim be denied.

The Board has thoroughly reviewed the record and will first discuss the parties' alleged procedural errors. Both parties allege that the other violated the time limit requirement of Rule 11. The Organization asserts that its initial claim was not answered within the time limits and the Carrier argues that the Organization did not appeal the claim in a timely manner. The record reveals that the November 2nd denial was hand delivered to the Claimant and it was sent to the Vestal, NY address of the Organization's Special Representative as listed on its letterhead. If there was nothing further in the record then the Organization's appeal of February 3, 2007 would have to be considered untimely. However, there is evidence of a letter dated May 14, 2006, from the Organization to the Carrier informing it that its Special Representative had a change of address to Apalachin, NY. In view of the fact that May 14th letter from the Organization to the Carrier preceded its claim letter of October 21st the Carrier cannot effectively argue that it was not informed of the Organization's new address, but again there is a legitimate reason for the Carrier's confusion in sending its denial to the Vestal, NY address, because even though it was advised on May 14, 2006, of the Organization's new address the claim letter of October 21, 2006 was written on the Organization's letterhead with a Vestal, NY address. Therefore, the Board believes after reviewing the unique circumstances of this case that neither party's argument rises to the level that the instant Claim should be resolved over the alleged violation of Rule 11. Additionally, the Board rejects the Organization's argument that the Carrier's initial denial did not meet the requirements of a legitimate denial, however, we do suggest to the Carrier that in the future it should make a greater effort to explain its reasons for disallowance of a Claim.

The Board having rejected the party's various procedural arguments will resolve the instant Claim on its merits. The facts are clear that on September 29, 2006, the Carrier instructed Carman Leveille to go to Lawrence, MA, prior to his regular shift in a company vehicle to pick up brake shoes and return them to East Deerfield, MA. The Organization stated that Claimant was first out on the overtime list, by virtue of the number of overtime hours that he accumulated and the Local Supervisor failed to notify the Local Committee to contact the required number of employees for the disputed work in accordance with Rule 29.2. A review of the correspondence indicates that the Carrier did not refute the Organization's position

while the Claim was on the property. Rules 29.2 and 29.5 state in pertinent part 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...”

“29.5 A record will be kept of overtime worked and employees will be called in order to distribute the overtime equally...”

The Carrier not having refuted the Organization’s recitation of neither the facts nor its position on the merits of the arguments while the Claim was being handled on the property requires the Board to find and hold that the Carrier violated the provisions of Rules 29.2 and 29.5. However in this instance due to the fact that there was a legitimate confusion over whether both parties may have violated the time limits of the Agreement and because the Carrier did not respond to the merits of the Claim account of that the confusion the Claim is sustained at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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 30th day of December 2008.