

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14009
Docket No. 13887
09-2-NRAB-00002-080039**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**(Brotherhood Railway Carmen Division -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 Rule 28.8 and 29.3, when they forced employees to work overtime at East Deerfield Yard.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carmen Toby Bassett and Ian Sisson in the amount of four (4) hours at the overtime rate of pay and not allow the Carrier to force employees to work overtime in the future. This is the amount he would have earned had the Carrier not violated the 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 September 7 and 13, 2007, the Claimants were assigned as Carmen at East Deerfield Yard, Massachusetts. Due to a high car count and the need to get cars repaired in an expeditious manner, there was a need for Carmen to work overtime. Because no Carmen indicated a willingness to work the overtime, the Assistant Superintendent instructed the Claimants to work four hours overtime on each of the claim dates.

The Organization has based its claim on Rules 28.8 and 29.3 of the Agreement, which read as follows:

“28.8 Except in emergencies or under the provisions of paragraph 29.6, employees will not be forced to work outside their regular bulletined hours.

29.3 In the case of real emergencies such as fires, floods, and washouts, supervisory authority will have the right to meet the emergency as to overtime according to their best judgment.”

The Organization contends that no “emergency” existed on the claim dates and that it was, therefore, a violation of the Agreement to force the Claimants to work overtime outside the hours of their bulletined assignments.

The Carrier agrees that no “emergency” existed as that term is utilized in the above quoted Rules. However, the Carrier’s position is that in addition to the emergency exception in Rule 28.8, there is also stated in the Rule, an exception under Rule 29.6, which reads as follows:

“29.6 In the event the Local Committee is unable to supply the requisite number of employees to work the overtime, the Carrier may assign the work in inverse seniority order.”

The Carrier stated that on the particular claim dates, there was no supply of ready volunteers for the overtime that needed to be filled and that it exercised its right to assign the work in inverse seniority order to the Claimants. The Organization did

not effectively refute the Carrier's assertion in this regard and in fact, during handling on the property, noted that "On occasion there is not enough volunteers to sustain the overtime demand."

The Board finds that in light of the fact that there were no Carmen who willingly agreed to work overtime on the claim dates, the Carrier did not violate the Agreement when it assigned the Claimants to such overtime work. On the contrary, it exercised its right to do so as specifically mandated in the Agreement. As to the Organization's request that the Board "not allow the Carrier to force employees to work overtime in the future," the Board notes that it does not have the jurisdiction to issue declaratory judgments, even had the Carrier improperly assigned overtime, which it did not do in the instant case.

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 8th day of May 2009.