



Award No. 16779

Docket No. MW-17675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it used a motor car repairman junior to Motor Car Repairman M. F. Ruge to perform overtime service on August 20, 1966. (System Case No. SG-9-66/MW-11-66.)

(2) Motor Car Repairman M. F. Ruge be allowed eight (8) hours' pay at his time and one-half rate because of the violation referred to above.

EMPLOYEES' STATEMENT OF FACTS: The claimant is regularly assigned as a motor car repairman in the Carrier's Gary Motor Car Repair Shop, with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days).

After the close of the work period on Friday, August 19, 1966, the Carrier decided to work five (5) repairmen for overtime service in the motor car repair shop beginning at 7:30 A. M. on Saturday, August 20, 1966. At about 8:00 P. M. on August 19, 1966, the Carrier called the claimant's home to advise him of the overtime work available on the following day. A babysitter answered the telephone and she was instructed to advise the claimant that the call concerned overtime work and that, if he returned home within the next hour, the Carrier desired that he return the call. The claimant returned home shortly after 9:00 P. M. and, upon receiving the message, construed the one hour time limit within which he was supposed to return the call to indicate that the overtime work was being performed that evening and that he returned home too late to be available for same. Therefore, he did not return the call. Upon receiving no call from the claimant within the stipulated time limit, the Carrier called and instructed a junior repairman to report for the overtime work at 7:30 A. M. on the following day.

The claimant would have returned the Carrier's call and would have willingly performed the overtime work if he had been advised that said work was to be performed beginning at 7:30 A. M. on Saturday, August 20, 1966.

It has not been the practice of the Carrier to call people in the wee hours of the morning and get them out of bed for overtime work. Only in cases of dire emergency has the Carrier done so.

Furthermore, we do not have a call rule on this property comparable to that which some of the Op's have, requiring that a call be made within a certain specified time before a man is to report for work. The Carrier feels that Mr. Ruge's loss, if any, was of his own making and that this claim is more or less of an after-thought. The reasonably available requirement of our Call Rule places an obligation on our employees. Mr. Ruge did not meet his obligation after being advised of the opportunity to work overtime.

For all of the above reasons, there is no merit in Mr. Ruge's claim and it is declined. As previously stated, your Organization withdrew Mr. Lozano's claim.

Very truly yours,

/s/ Paul H. Verd
Paul H. Verd
Vice Pres.-Personnel"

Nothing more was heard from the Organization until this dispute was submitted to your Board.

THE RULE THE ORGANIZATION RELIES UPON

"RULE 29.

(a) Employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two (2) hours and forty (40) minutes of work or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on minute basis.

When called four (4) hours or more in advance of regular work period and service for which called extends into the regular work period, employees will be paid at the rate of time and one-half or double time after sixteen (16) hours' service, computed from the beginning of each regular shift until relieved from the service for which called. If relieved during first regular work period employees will be paid pro rata rate during balance of that period.

Senior employees, if reasonably available in the respective gangs, will be given preference to calls.

* * * * *

(Exhibits not reproduced.)

OPINION OF BOARD: An employee junior to the Claimant, was called and used to perform overtime work on August 20, 1966. The question is, did the Carrier make a reasonable effort to call M. F. Ruge, the Claimant, whose assigned work week extended from Monday through Friday with Saturday and Sunday as rest days.

Late in the afternoon of Friday, August 19, 1966, orders were given to work five (5) Gary Motor Car Repairmen, among others, on Saturday, August 20, 1966, beginning at 7:30 A. M.

Mr. D. E. Snyder, Assistant Scales and Work Equipment Supervisor, began calling down the seniority list at approximately 5:30 P. M., Friday. After acquiring four (4) Motor Car Repairmen, Mr. Snyder telephoned the home of Mr. Ruge, Mr. Ruge being next in seniority on the list. At Mr. Ruge's home a baby sitter answered and informed Mr. Snyder that Mr. Ruge's whereabouts were unknown nor did she know when he might return home. Mr. Snyder informed the baby sitter to have Mr. Ruge return his call if he returned home within the next hour (9:00 P. M.). Mr. Snyder began calling the next man on the seniority list at 10:00 P. M., Friday, finally obtaining the fifth Motor Car repairman at 11:00 P. M., Friday.

It is stated that Mr. Ruge returned home shortly after 9:00 P. M., Friday and upon being informed by his baby sitter that the call concerned overtime work and if he returned by 9:00 P. M., the Carrier desired that he return the call, Mr. Ruge construed the message to pertain to work to be performed that evening and that he had returned home too late to be available for same. Mr. Ruge did not return the call.

In the Agreement of August 1, 1952, the last paragraph of Rule 29(a) — Calls states that "Senior employees, if reasonably available in the respective gangs, will be given preference to calls." There are no minimum or maximum call restrictions in the Agreement.

Claimant contends that he was reasonably available for said work; that the baby sitter should have been informed that the overtime work was to be performed Saturday; that Mr. Snyder could have made several calls to the Claimant or called the next morning before the work was scheduled to be performed; and therefore the Carrier did not make reasonable effort to call Claimant.

The Carrier recognized that Claimant was entitled to be called and contends that Claimant was not reasonably available for the overtime work.

The Claimant received a message concerning overtime work to be performed from the Carrier of sufficient import to inform him that such work was available and to give him sufficient opportunity to inform the Carrier whether or not he was available.

On his return home, shortly after 9:00 P. M., Friday, all Mr. Ruge needed to do was to return the call from the Carrier. It was Claimant's duty to return the Carrier's call and in view of his failure to do so it is the opinion of the Board that the Agreement was not violated and therefore the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1968.