Award No. 18581

Docket No. MW-18935

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned other than Messrs. J. Hakes, G. Veillet, R. Talbot and L. Aho to perform the work of picking up scrap metal on Dock 6 on Saturday, March 8, 1969. (System File 14-69).

(2) Messrs. J. Hakes, G. Veillet, R. Talbot and L. Aho each be allowed eight (8) hours' pay at their respective time and one-half rates because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants are regularly assigned B&B employes with a work week extending from Monday through Friday (Saturdays and Sundays are designated rest days).

On Friday, March 7, 1969, the Carrier assigned the claimants to perform the work of picking up scrap at the ore docks. The scrap was gathered and placed into piles so as to facilitate subsequent loading into a railroad car with a crane. The work assignment was not completed on Friday and was continued on Saturday, March 8, 1969. However, B&B forces other than the claimants were used to perform the overtime work accruing to this particular work assignment on said rest day.

The claimants were available and would have willingly performed the overtime work if the Carrier had so desired.

The Employes contend that the assignment of other than the claimants to perform this overtime work was in violation of the Letter of Agreement dated July 29, 1966 which, insofar as it is pertinent hereto reads:

"AGREEMENT made this 29th day of July, 1966 by and between the DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY and certain of its employes represented by the BROTHERHOOD OF MAINTENANCE WAY EMPLOYES.

It is agreed that Rule 19 of the current agreement is cancelled in its entirety and the following substituted therefor:

RULE 19
Division of Overtime

AGREEMENT made this 29th day of July, 1966 by and between the DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY and certain of its employes represented by the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES.

It is agreed that Rule 19 of the Current agreement is cancelled in its entirety and the following substituted therefor:

(a) An employe assigned to a particular job on which overtime is required will be given all the overtime connected with that assignment.

(b) All other overtime emergency or general, will be divided as equally as possible in a calendar year among the employes in that class of work for which overtime is necessary at the particular headquarters, subject to the ability of the employes to perform the overtime work. A record of all overtime stipulated in this paragraph shall be posted monthly and kept current with a running record of overtime worked during the month.

(c) An employe who fails to respond when called or who is off work for any reason or who is working in a supervisory capacity shall be charged with any overtime that he could have worked during the off period or while working as a supervisor.

(d) An employe who transfers from one headquarters to another will take the highest overtime hours of the employe in his class of work at the point to which he transfers.

(e) If sufficient employes are not available in a particular class of work to perform necessary overtime work, the employe in the same group with the lowest number of overtime hours at the particular point, if qualified to perform the work, will be called.

Accepted for the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	Accepted for the DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
/s/ Ralph Garwood General Chairman	/s/ H. W. Kosak Director of Labor Relations"

A copy of the correspondence exchanged during the handling of these claims on the property is attached and marked as "Carrier's Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants, employed as B&B mechanics at the Duluth ore docks, were assigned on March 7, 1969 to gather scrap metal

and place it in piles on the dock for subseqeunt loading by crane into a scrap car. On the following day other B&B employes were called to work on their unassigned day to load the scrap metal with the use of a crane and turn over ore dock spouts so that they could be repaired. The employes who performed the work were of the same craft and class as the claimants, and had not accumulated any overtime during the calendar year prior to the assignment on March 8, 1969.

The Organization contends that the Carrier violated Rule 14 (k) of the Agreement and a Memorandum of Agreement between the parties dated July 29, 1966 which read in pertinent part:

"RULE 14 — 40-Hour Work Week

(k) Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe.

RULE 19 — Division of Overtime

AGREEMENT made this 29th day of July, 1966 by and between the DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY and certain of its employes represented by the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES.

It is agreed that Rule 19 of the current agreement is cancelled in its entirety and the following substituted therefore:

(a) An employe assigned to a particular job on which overtime is required will be given all the overtime connected with that assignment.

(b) All other overtime, emergency or general, will be divided as equally as possible in a calendar year among the employes in that class of work for which overtime is necessary at the particular headquarters, subject to the ability of the employes to perform the overtime work. A record of all overtime stipulated in this paragraph shall be posted monthly and kept current with a running record of overtime worked during the month."

* * * * *

The Organization argues that Paragraph (a) of the revised Rule 19 is applicable here, in that the loading of scrap on March 8 was a continuation of the "particular job" started by the claimants on March 7 within the meaning of the rule and therefore should have been assigned the overtime as being "connected with that assignment." Rule 14 (k) is also invoked since by its terms the claimants were the "regular employes" as contemplated by that rule.

The Carrier defends its action with the argument first, that Paragraph (b) of Rule 19 is applicable here, and that the work performed on March 8 involved two tasks which were not related to any "particular job" performed by the claimants on the preceding day, as such was intended by the parties in the negotiation of a revision of the rule governing the division of overtime. Second, it is urged by the Carrier that Rule 14(k) is not controlling in any sense, since no employe or group of employes could be considered as being or were "regular employes" on the assignment of gathering or loading scrap metal.

In support of its position the Carrier lays stress on the fact that the assignment of the crew on March 8, who had accumulated no overtime up to that date in the year 1969, was in compliance with Rule 19 (b) and in keeping with the intent and purpose of the rule. The language was written to provide equity to all employes in the class of work for which overtime is necessary "as equally as possible" during a calendar year. In making a judgment as to which paragraph of the rule applied to the work to be performed on March 8, it was concluded that the overtime was "general" and that the claimants, who had already accumulated some overtime hours in that year, should not be scheduled.

In their submissions to this Board, both parties treat at length with the semantics of the language of the Agreement as it relates to a "job" of work and the components of the work performed at the overtime rate as either part of, as urged by the Organization, or separate and distinct from the assignment performed on the day preceding, as argued by the Carrier. Both arguments are a bit strained in the effort to make their respective points. Whether the assignments on each of the days in question were or were not part of a single "particular job" as intended by Rule 19 (a) can be argued with some degree of plausibility in both directions.

In the face of this semantical stand-off the Board must look to the purposes of Rule 19 which was written, in the 1966 revision, to provide for equity among all eligible employes in the division of overtime. We believe that the effort to balance overtime through making the assignments as the Carrier did on March 8 more nearly meets the intent of the Rule than the construction placed upon it by the Organization, absent any clear and conclusive evidence to the contrary.

We have studied with care the arguments and the many awards cited by the Organization and they do not provide that conclusive evidence. In each case, where the claim was sustained under this or similar contract language, the Board dealt with a job entity, a post of employment, or an assignment which continued with some regularity before the occasion for overtime arose. There was no problem of identifying a "particular job;" when, for example, in one case, work was assigned outside the scope of the Agreement on the regular employes day of rest (Award 15158 - Engelstein). This is typical of the clear-cut factual situations in the awards cited, and which is not present here.

In a recent award cited (No. 18393 - Franden), the Board there found that the claimant had been "the employe assigned to maintenance work on the Taconite Storage Facility" during the week immediately prior to the overtime work. The claim of that employe was sustained since he was replaced on his unassigned days by employes who had not been working on that

facility. Again the fact situation is distinguishable from the case before this Board.

We have here the fact of a task of work performed on one day and other tasks of work performed on the day following at the overtime rate. There was not an extension of a "particular job" from one day into the next. The Claimants were not replaced on a post of employment, or an assignment which could be held in any sense to have been consistently and repetitively the work of the claimants, as was found in prior awards.

It is, therefore, the opinion of the Board that the Carrier assigned the work on March 8, 1969 in compliance with Rule 19 (b) as such was intended by the parties to the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.

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