

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20367
Docket Number MW-20502

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The Agreement was violated when an **employee** junior to C. L. **Winemiller** was permitted to work from **3:30** P.M. on July 13, 1972 to **3:30** P.M. on July 14, 1972 instead of using C. L. **Winemiller** who was senior, available and willing to perform that service. (System File 1-12/E-265-18 E-265)

(2) As a consequence of the aforesaid violation, the Carrier shall now pay C. L. **Winemiller** the exact **amount** of pay he would have received if he had been permitted to **perform** the work mentioned in Part (1) above, i.e., **15-1/2** hours at double time and the difference between double time and straight **time** for the period from 7:00 A.M. to **3:30** P.M. on July 14, 1972.

OPINION OF BOARD: Claimant was regularly assigned to work from 7:00 A.M. to **3:30** P.M. Mondays through Friday. Because of a derailment on **July** 12, 1972, Claimant and other employees were called for overtime and reported at **9:30** P.M. Claimant worked continuously from **9:30** P.M. on July 12, 1972 until **3:30** P.M. on July 13, 1972, at which time he was sent home.

Carrier **determined**, at about 2:00 P.M. on July 13, 1972, that it required an employee to serve as a watchman during the period **3:30** P.M. July 13 to **3:30** P.M. July 14. Carrier assigned the watchman duties to an employee junior to Claimant. (The junior employee had **not** reported for duty at **9:30** P.M. on July 12, 1974, but rather at his regular starting time of 7:00 A.M. on July 13).

Claimant asserts that he should have been afforded the opportunity to serve as watchman, and receive the premium pay, under **Rule** 30(f):

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

Carrier states that the Foreman was asked by the **Roadmaster** if any of his men wanted to remain as watchmen on the night of the 13th of July and that the For- replied that none of the men that had worked all night wanted to stay. As a result, the junior employee (who had not worked the previous night) was requested to stay as watchman.

We feel that Rule 30(f) is clear. It contains no exceptions, other than availability which is not in issue here. We **may** not alter the **Rule** by adding exceptions. While the parties have engaged in certain speculation as to mounts of sleep the employees may or may not have had, we are of the view that said speculation is gratuitous. Both in the submission and in the Reply, Carrier conceded that if the **Roadmaster** had directed the For- to keep the junior employee on duty, **then it** would have been Liable to pay for its error. But, Carrier seeks to avoid payment because it relied upon the Foreman's statement, and it had a right to **assume** that the Foreman had talked to his men about the possibility of staying as watchmen before the Foreman advised that none desired to stay.

While the record confirms that the Foreman did, in fact, state that none of the employees desired to stay, the record contains no evidence to contradict **Claimants'** statement that he was never asked by the Foreman if he desired to stay and work the overtime.

The Organization has cited a number of Awards to demonstrate that the Carrier's business can only be performed by its agents and if the employee performs work in furtherance of the master's business, the master **is** liable. See for example Award 7190 (Carter) wherein it was noted that any violation of an agreement ordered by a foreman is a violation by the Carrier. While the factual circumstances of the cited Awards are not identical to those in this record, the Board feels that the Foreman here could not set aside the agreement **Rules** insofar as Claimant was concerned. We **will** sustain the **claim**.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at **Chicago, Illinois**, this 23rd day of August 1974.