NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20515

THIRD DIVISION Docket Number CL-20592

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7506) that:

(a) The Bureau violated the Clerks' Agreement at Chicago, Illinois when it called a junior regularly assigned employe to make inspection of fresh meat on December 14, 1972, during unassigned hours, and failed to call senior regularly assigned employe, D. H. Sawicki, also

(b) Claim that Mr. Sawicki be compensated for all losses sustained.

OPINION OF BOARD: The facts in this dispute, which are not contested, indicate that Claimant refused to accept a call for service on his rest day, November 25, 1972, allegedly for reasons of a personal emergency. On November 28, 1972 Claimant's immediate supervisor removed his name from the overtime list and so informed Claimant. On December 14, 1972 a junior employe was called out on overtime for an inspection job in preference to Claimant, giving rise to this claim.

The pertinent rules read as follows:

"RULE 34. (i) - Work on Unassigned Days -

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

The Memorandum of Agreement of October 6, 1966 (and Note 1 thereof) was entered into in order to clarify and regularize the procedure for overtime work and was intended to be an application of Rule 34 (i) above. Note 1 of that Agreement prwides:

"NOTE 1: All regular employees desiring to work on unassigned days or when it is necessary to perform work either before or after their regular assigned tour of duty, must indicate to the supervisor, their willingness to do so in writing and must file their name and address as well as the telephone number where they can be reached. It is understood that any regular employee not filing their name, address and telephone number, in line with the foregoing, will be considered unavailable and will not be called to perform work on an overtime basis.

If an employee desires to change his mind, he may do so in writing, by giving the supervisor seven calendar days advance notice. All notices must be in duplicate with one copy to be receipted, dated and signed by the supervisor and returned to the employee."

As Carrier put it, the sole question at issue is whether Carrier acted arbitrarily in removing Claimant's name from the overtime list. Carrier contended that Claimant had persistently and without justification refused to accept overtime calls which were given him in accordance with the October 6, 1966 Agreement. Carrier states that Claimant had attempted to "pick and choose" the overtime which he would accept which was contrary to the intent of the parties. Carrier argues that when the Agreement was entered into in 1966 it was understood that the only time an employe can refuse overtime is when there is good cause, such as personal illness. Carrier concluded that Claimant's conduct clearly disqualified him from the overtime list.

Petitioner asserts that the only way an employe's name may be removed from the overtime list is by his own action. It is argued further that Claimant is entitled to the protection of the Agreement and that Carrier's action was arbitrary and in violation of the specific terms of the 1966 understanding.

It is apparent that there is a difference of opinion as to work assignments and Claimant's rights with respect to the overtime list. Even assuming that Carrier is completely correct in its attitude towards Claimant and the overtime problem, we must look to the specific provisions of the contract, which in this case are abundently clear; there are no provisions giving Carrier the right to remove an employe's name from the overtime list. Even though Carrier may have equity on its side in this dispute, it does not have the right to arbitrarily change or ignore Agreement provisions. Discipline, with attendent due process, may have been in order, but not unilateral r-al from the overtime list. The Claim must be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.