NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20525
Docket Number SO-19479

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalman on the former Boston and Albany Railroad:

On behalf of Mr. W. G. Kie, Signal Mechanic, for all overtime hours worked by Messrs. R. B. Hansen and P. Usyk in connection with the coverage at East Chatham from March 22, 1970, until such time as Mr. Kie is permitted to work the overtime in preference to Messrs. Hansen and Usyk who are junior to Mr. Kie.

Mr. Kie under Rule 20 of the Agreement, has seniority wer Messrs. Hansen end Usyk and, in the absence of a rule assigning overtime, has preference over these employes for overtime work.

/Railroad Docket 11649-NH/

OPINION OF BOARD: Claimant W. G. Kie holds the position of Signal Mechanic on the Albany Division, with headquarters at Pittsfield, Massachusetts. The claim, which Claimant purports is a continuing violation, occurred at East Chatham, New York on the Carrier's main line running between Boston, Massachusetts and Albany, New York. Train service along this segment is controlled by an automatic interlocking signal system.

On March 22, 1970 a derailment at East Chatham caused damage to the signal system such that repairs could not be effected for more than eight hours. Carrier assigned two signalmen junior to Claimant in point of service to protect the service on an overtime basis while repairs were being performed. During this period it was necessary for the employes to operate, spike, block and clamp switches and to give hand signals to train crews arriving at Past Chatham.

It is uncontested that the applicable Agreement contains no express rule regarding assignment of overtime on a seniority basis. Claimant asserts, however, that notwithstanding the absence of a rule assigning

overtime, he was entitled to said **overtime** assignment solely because of his seniority. Accordingly, the instant claim was filed on May 15, 1970 for the overtime actually worked by the junior employes on March 22, 1970 as well as all other overtime worked by employees junior to Claimant since March 22, 1970 to date.

Carrier resists the claim primarily upon the basis that the Agreement is silent regarding assignment of overtime and that accordingly it is entitled to exercise wide flexibility and discretion in such assignments. Carrier concedes that it generally will assign overtime to the senior qualified employe but insists that absent a tie it may assign the most qualified employe to overtime work irrespective of seniority. In the latter connection, **Carrier** asserts that Claimant was less qualified than the junior assignees to perform the unsupervised hand signalling and switch operations required by the East Chatham derailment of March 22, 1970.

Petitioner argues that seniority is mandatorily determinative of the overtime assignment herein because of alleged past practice and precedent awards of this Division, 18481 and 18870 inter alia. We have studied. carefully the cited authority and cannot concur that said awards are controlling here. Each of these awards is distinguishable from our case on the facts and arguments developed on the property and neither presented directly the issue raised herein; albeit Award 18481, which turned on a question of emergency, arguably included an a priori observation that "seniority rules" were somehow applicable therein.

The Instant case presents the basic issue not expressly addressed in the earlier cases viz., whether **assignment** of **overtime** on **a** seniority basis is mandated absent any contractual provision to that effect in the Agreement of the parties.

Petitioner maintains that its position is upheld by past practice on the property. Under generally accepted arbitral principles, past practice may be relevant in determining the intent of the parties where the Agreement is silent or ambiguous regarding a disputed point. One desiring to prove past practice, however, ordinarily must show convincing evidence of a course of conduct, mutually accepted over a period of sufficient duration to imply that this was the practice intended by the parties. Close consideration of the record herein does not support such a conclusion regarding overtime assignment on a seniority basis. Accordingly, we have no authority to engraft such a requirement onto the otherwise silent Agreement absent strong evidence that the parties so intended.

In the absence of Agreement requirements regarding overtime assignments Carrier may exercise sound discretion in such assignments subject to review for arbitrary, unreasonable or capricious behavior. No such violation is demonstrated in this record.

Therefore, the instant claim is without support in the Agreement and must 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1974.

Dissent to Award 20525, Socket SC-19479

The Majority has declared the facts and arguments in this dispute to be distinguishable from Awards 18481 and 18870, involving the present parties. It is asserted that the instant case presents the basic issue not expressly addressed in the earlier cases, viz., whether assignment of overtime on a seniority basis is mandated absent any contractual provision to that effect in the Agreement of the parties.

We do not agree, and we find agreement with Award 20525 only in that it does not overrule Awards 18481 and 18870.

W. W. Altus, Jr.
Labor Member