

NATIONAL RAILROAD ADJUSTMENT BOARD

'THIRD DIVISION

Award Number 22424
Docket Number MW-22433

George S. Roukis, 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 Section Foreman D. S. **Devault** was not permitted to perform overtime service on his assigned section territory (Section 102) on June 24 and 25, 1976 **and** the Carrier instead used Foreman **B. C. Hindman** for such service /System File i-25 (33)/E-349-11 E-349/.

(2) As a consequence of the aforesaid violation, the Carrier shall now pay Section Foreman D. **S. Devault** 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., twelve and one-half (12½) hours (**6:30** p.m. on June 24 to 7:00 a.m. on June 25, 1976) at his double time rate and the difference between double time and **straight-time** rate for eight (8) hours beginning at 7:00 a.m. on June 25, 1976."

OPINION OF BOARD: In this dispute, we are confronted with two basic although interrelated questions.

Firstly, was carrier obligated to give **claimant** preference in making the contested assignment?

Secondly, did carrier, under the unique and particular circumstances of this case, act permissibly when it did not call claimant to perform this assignment?

Rule 30(F) requires that, "**The** senior available men shall be given preference in the assignment of overtime work on their home section."

It does not mandate work exclusivity, but does require priority calling of the most senior available men.

A review of the record indicates that claimant was the most senior available person in **his home** section and thus pursuant to the agreement, he should have been called. But an unusual situation was present.

Claimant was called to work on a serious derailment near Camden, Tennessee at approximately **5:30** A.M. on June 23, 1976. He worked continuously at that **situs** until **6:30** P.M. on June 24, 1976 or a total of 37 consecutive hours.

Inasmuch as he was the most senior **employee** available for **overtime** work, carrier did not call him to assume the watchman's assignment because of his apparent physical exhaustion.

Carrier is entrusted with a public responsibility to provide and maintain a safe and orderly railroad system. It had just experienced a significant derailment. A strong presumption existed that claimant was physically enervated. **gad** he continued to work for the next **12½** hours and then report to his regular assignment at 7:00 A.M. on June 25, 1976, he would have remained awake and working for approximately 58 hours.

This state of affairs was ill conducive to the parties' mutual best interests, especially, where as here, a potential safety problem existed.

Under these atypical circumstances, carrier did not act **impermissibly** when it did not call claimant to perform the watchman's **assignment**.

His physical condition warranted this action.

gut, aside from this anomalous and mitigative situation, **Rule 30(F)** **must** still be observed when overtime assignments affecting **covered employees** are made.

We will deny 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.