NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24518

THIRD DIVISION

Docket Number MW-24373

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line Railroad Company

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

1. The Agreement was violated when Section Foreman C. A. Wheeler was not used to perform overtime service on his assigned section territory (Section 8121) from 8:00 A.M. to 4:30 P.M. on December 8, 1979 (System File C-4(36)-CAW/12-2(80-35) G) .

2. Section Foreman C. A. Wheeler be allowed eight (8) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant, regularly assigned as section foreman Monday through Friday, complains that he should have been called to supervise the loading of track material in his section territory on Saturday, December 8, 1979. He contests the use instead of an apprentice foreman who is regularly assigned on the same days to another section territory. The claim asserts a violation of Rule 28.

The rule provides, in pertinent part:

> "Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by . . . . in all other cases, by the regular employee." (Underscoring added).

The Organization argues that Rule 28 applied to the Saturday work in dispute and that it entitled the Claimant to that work at overtime rates. The Organization explains: The work was not a part of any assignment, because Saturday was a regular rest day for both the Claimant and the apprentice foreman. As between them, the Claimant must be deemed "the regular employee", because the required work occurred in the section territory where the Claimant is the regularly assigned foreman.

The Carrier responds that Rule 28 does not govern the particular facts of this case.

During the five days immediately preceding the Saturday, the apprentice foreman had been supervising the pickup of material on an extensive rail relay project. The Saturday workday was arranged under Rule 38 for the benefit of the project crane force as make-up time for a later day off. The apprentice foreman was assigned to work that Saturday with the crane force, supervising the loading of material. His assignment was treated as make-up work. Like the crane force, he was paid at his regular rate and he had the later day off.

The Organization challenges the propriety of the make-up time arrangement for the apprentice foreman.' It contends that, as part of the stationary forces, he was not covered by Rule 38. The Carrier relies on an alleged long-standing practice on the property of having the stationary forces observe the hours for making up time agreed to by the floating forces, when both are required to work together.

On careful review of the record, the Board concludes that the claim cannot be sustained on the facts presented. We find that neither rule cited by the Organization supports its position.

It is undisputed that the apprentice foreman had worked on the project in progress during all five days preceding the particular Saturday. It accordingly appears logical and sensible to this Board to consider the apprentice foreman, rather than the Claimant, as "the regular employee" under Rule 28 who was entitled to the ongoing project work to be performed on the sixty successive day. In these circumstances, and absent compelling contractual or other reasons, we cannot accept the Organization's view that the apprentice foreman's previous work location should be determinative of the status he achieved in the subsequent assignment here in dispute. We accordingly, conclude that Rule 28 does not favor the Claimant; rather, it defeats the claim. On that basis alone, Rule 28 is dispositive of the claim, compelling its denial.

We have also considered the Organization's further argument based on Rule 38.

While Rule 38 did not expressly permit the apprentice foreman's time on the Saturday to be treated as though it were make-up work, it did not prohibit that action, on the facts presented. The apprentice foreman was an auxiliary part of the work force needed that day for the ongoing project, as he had been in the preceding five days, and he enjoyed the benefit of the make-up arrangement by having the later day off. For these reasons, the Board concludes that the Carrier's action had a reasonable basis in fact and was not improper under the Agreement.

We accordingly find it unnecessary to consider the Carrier's established practice argument under Rule 38. We do note recent Award No. 24330 of 'the Third Division upholding a similar assertion on the basis of the particular record made there.

The claim will 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1983.