

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hyman Cohen, Referee

Award Number 24918
Docket Number MW-24951

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The Carrier violated the Agreement when it assigned junior Welder Foreman R. A. Wingate to perform overtime service on January 16 and 23, 1982 instead of calling and using Welder Foreman T. J. Cox who was senior, available and willing to perform that service (System File MW-82-51/341-46-A).

(2) Welder Foreman T. J. Cox shall be allowed twenty-two (22) 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 is employed as a Welder Foreman at the Carrier's Rail Welding Plant in Houston, Texas. A claim is filed with the Carrier because it assigned a junior Welder Foreman, R. A. Wingate, rather than the Claimant to perform overtime service on January 16 and 23, 1982. It is undisputed that the Claimant has greater seniority than Welder Foreman Wingate.

It is reasonable to infer that the Carrier did not offer the Claimant overtime work on January 16, 1982 because it was of the view that he failed to perform his duties as instructed on January 15, 1982. The record discloses that the Claimant performed his duties on January 15, 1982 in compliance with his instructions and cannot be held responsible for the unsecured rails which were discovered after his shift ended.

However, if the Claimant had failed to perform his duties as instructed, the Carrier could easily address such a punishable offense without resorting to an abridgement of the Claimant's entitlement to overtime work, based upon his seniority. The point to be emphasized is that the Carrier cannot refuse to offer overtime work as a form of discipline since such action would violate the seniority rights of the Claimant under the Agreement.

Turning to the claim for overtime work which was performed on January 23, 1982, the Board concludes that the Claimant did not receive clear instructions to work such overtime. Welding Supervisor O. W. Harris informed Welder Foreman Wingate on January 22, 1982 that the Claimant "could come to work" on the following day" if "he wanted to". The Claimant indicated to Welder Foreman Wingate that since Supervisor Harris "didn't line (him) up (he) would be taking it on (his) own authority to come to work." In light of the vague instructions given by Supervisor Harris to Welder Foreman Wingate and the manner in which the latter conveyed the instructions to the Claimant does not warrant the conclusion that he was offered the opportunity to work overtime in clear and unequivocal terms. It is also significant that the Claimant was in the presence of Supervisor Harris for the last five (5) minutes of his shift on January 22, 1982, but was not informed of the overtime opportunity on the following day.

Accordingly, the Claimant is entitled to eight (8) hours and fourteen (14) hours of pay for a total of twenty-two (22) hours of pay at his time and one-half rate because of the Carrier's failure to offer him overtime work on January 16 and January 23, 1982.

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

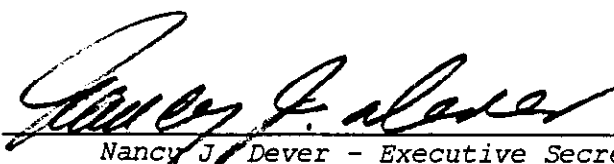
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1984.