NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25147

THIRD DIVISION Docket Number MW-24026

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Colorado and Southern Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior Grinder E. E. Martinez, Jr. to perform overtime service on October 27 and 28, 1979 at the "B N Welding Plant" instead of calling and using Grinder D.. A. Strock who was senior, available and willing to perform that service (System File C-27-79/ MW-422).

(2) Grinder D. K. Strock shall be allowed sixteen (16) hours of pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: Claimant is a Grinder who contends he lost two days (a Saturday and Sunday on the same weekend) of overtime he otherwise deserved when Carrier made the assignment to a junior employe.

The facts in this case are simple. It is undisputed that Claimant was eligible and qualified for, and would have received, the two **overtime** shifts in question assuming he was available and assuming Carrier had an obligation to notify him of the work pursuant to Rule 21(d) in the Agreement between the parties which reads in relevant part:

> 'Senior employees in their respective ranks and gangs will, if available, be called **or** used to perform **overtime** work.'

Carrier asserts that it had a right to assume the unavailability of Claimant within the meaning of Rule 21(d) and denies that it had any obligation whatsoever to attempt to apprise Claimant of the weekend overtime opportunity. The basis for Carrier's contention in this regard is the fact that Claimant was absent from work without notification of permission on the Friday immediately preceding the Saturday and Sunday on which the disputed overtime was worked. Carrier contends that there was a well-established practice (grounded in the operational necessity of the welding plant where Claimant worked and in the **sheer** impossibility of contacting many employes after they had left the property) of assigning weekend **overtime** on the preceding Friday to those actually "on the property" on Friday who were eligible **for** and wanted to perform the overtime. Rarely, if ever, asserts Carrier, was anyone ever called out of their homes on the weekend to perform overtime work.

Carrier also argues that any employe who is absent from work, with or without permission or notification, can legitimately be presumed by Carrier to be unavailable for **overtime** work until that employe has reestablished the presumption of availability by actually returning to work or "reporting for duty" on his regular assignment.

The Organization representing Claimant maintains that Rule 21(d) is clear on its face in requiring Carrier to attempt to contact the senior qualified employe for an overtime opportunity to determine his availablity for same. They deny that Carrier has any right to indulge in any presumptions regarding availability, based on absence prior to the overtime shift to be worked. Moreover, the Organization denies that Carrier has proved any such "practice" as is alleged by Carrier and that, in any event, such practice, even if established, could not prevail against the clear and unambiguous Agreement language to the contrary.

Because the record evidence is insufficient, this Board does not accept as controlling in this case Carrier's assertions regarding their practice in assigning overtime in the welding plant. Accordingly, it becomes unnecessary for us to judge whether such practice, if proved, is or is not necessarily in conflict with the language of Rule 21(d).

Further, we do not find compelling the arguments of Carrier that any employe absent from his regular assignment with or without notification, and for whatever reason, can be automatically assumed to be unavailable for overtime until he returns to work on his regular assignment; whether unavailability could be properly assumed or not would surely turn in part, at least, on what had been communicated to Carrier regarding the reason for, and the probable duration of, the absence.

Bow-ever, it must be recognized that failure to "cover a shift., or absence without notice is, of course, generally viewed as a quite serious breach of an employe's obligations to his employer. Such a transgression can, under some circumstances, subject an employe to a disciplinary layoff or, if frequently repeated, to even permanent removal from service. Claimant here was unavailable for the easy and routine "on the job. determination by Carrier of Claimant's desire for available overtime under circumstances (caused by his failure to meet the simple and accepted obligation to report off) which resulted in yet additional significant uncertainty and inconvenience (if not hardship) being imposed on Carrier by Claimant. We find that it is not unreasonable then, that Carrier, in turn, be allowed to make an assumption of unavailability and be released from any obligation that Carrier might otherwise have under Rule 21(d) to expend extra time and effort to apprise Claimant of overtime opportunities.

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 9th day of November 1984.