

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25347  
Docket Number SG-25282

George S. Roukis, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (**Amtrak**))

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation that:

Claim No. 1. NEC-BRS-SD-130

(a) Carrier violated the overtime agreement between the Supv. C&S and the Local Chairman dated April 16, 1979. Article III (section 2) was violated when L. D. Barath was used on Sept. 5, 1981 (0800-1530), and on Sept. 6, 1981 (0600-1230), to assist maintainer R. L. Kordek in servicing telephone cable with nitrogen between Baltimore and **Landover**.

(b) Claim that Mr. Balcerowicz be paid seven hours and thirty minutes at the time and one half rate of pay for 9/5/81, and six hours and thirty minutes at the time and one half rate of pay for 9/6/81. Mr. Balcerowicz is senior to Mr. Barath. Although Mr. Balcerowicz was available for this overtime, he was not called.

Claim No. 2. NEC-BRS-SD-131

(a) Carrier violated the overtime agreement between the Supv. C&S and the Local Chairman dated April 16, 1979. Article V (section 1) was violated when L. C. Houser was used on Sept. 7, 1981 (0730-2200), to assist maintainer R. L. Kordek in servicing telephone cable with nitrogen between Baltimore and **Landover**.

(b) Claim that Mr. Balcerowicz be paid fourteen hours and thirty minutes at the time and one half rate of pay for 9/7/81. Mr. Houser is a telephone inspector, and should not have been used ahead of Mr. Balcerowicz. Mr. Balcerowicz was available for this overtime on the Labor Day Holiday, and was not called.

OPINION OF BOARD: The Organization asserts that Carrier violated the Overtime Agreement when Claimant was not used on September 5 and 6, 1981, respectively, to assist a Maintainer service telephone cable with nitrogen between Baltimore and **Landover**. It further contends that Carrier again deprived Claimant of overtime when he was not called to perform the same type of work on September 7, 1981. By way of background, Claimant was on vacation from August 31, 1981, through September 4, 1981, and the days claimed immediately followed this period. September 5 and 6, 1981, were his normal rest days; his assigned work week beginning Monday to Friday, 7:30 - 4:00 P.M., and September 7, 1981, was Labor Day. The Organization argues that Carrier had traditionally observed the Local Overtime Agreement, which according to the Organization required Carrier to call employees who were on vacation to work overtime assignments on days adjacent to their vacation. It avers that Carrier paid similar claims in the past and contends that Claimant's Hours of Service Report for the work week August 16, 1982, through August 27, 1982, shows that he was called three times on rest days adjacent to his vacation, twice on rest days preceding his vacation and once on the rest day following his vacation.

Carrier argues that Claimant's Hours of Service Report which was submitted by the Organization on February 23, 1983, some six (6) months after the final appeals conference was new material, and thus, inadmissible at the Board Level. It asserts that the Local Overtime Agreement relied upon by the Organization. has no controlling effect since it was not agreed upon by the signatory parties authorized to amend the applicable Rules Agreement. It asserts that it has never been the practice to use employees to **work** overtime assignments adjacent to vacation periods **unless** an **employee** specifically advised Carrier that he wanted to be disturbed during his vacation period, and noted his availability for work. It does not contest that employees may have worked overtime adjacent to their vacation periods, but observes that employees always provided advanced notification.

In our review of this case we disagree with Carrier that Claimant's Hours of Service Report is inadmissible since the document submitted to Carrier on the property on February 23, 1983, was well before the Organization's May 31, 1981, notice to the Division of its intent to file an **Ex Parte** Submission. As we explicitly indicated in Third Division Award No. 20773, any document submitted on the property prior to the date of the Notice of Intention is acceptable, provided the timing of the submitted document did not preclude the other party from reasonably responding to it before submission to the Board. We find no evidence that Carrier was handicapped by the Organization's submittal of the Report on February 23, 1983, and it is admissible documentation.

On the other hand, we disagree with the Organization's position that the Local Agreement was indisputably operative. The evidence persuasively indicates that employees notified Carrier in advance that they wished to be disturbed during vacation periods, and this practice was not inconsistent with the overtime requirements of either the National Vacation Agreement for Non-Operating **Crafts** or Article 2, Section **23(h)** of the Schedule Rules Agreement. In this instance, there is no evidence that Claimant notified Carrier of his intention and availability to work overtime adjacent to his August 31, 1981, through September 4, 1981, vacation period, and accordingly, we are compelled to 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 **Employee** involved in this dispute are respectively Carrier **and Employee** 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 15th day of March 1985.