NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26403

THIRD DIVISION Docket Number&-26586

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned junior Repairman T. A. Matuschak to perform overtime service on January 28 and 29, 1984, instead of using Repairman P. W. Beck, who was senior, available and willing to perform that service (System Docket CR-874).

(2) Claimant P. W. Beck shall be allowed sixteen (16) hours of pay at his time and one-half rate."

OPINION OF BOARD: The Claimant is a Maintenance of Way Repairman at the Canton Repair Shop with a Monday through Friday workweek. On January 28, 1984, the Carrier assigned Repairman T. A. Matuschak to perform overtime service. Matuschak is junior to the Claimant. The Claimant submitted a Time Claim for sixteen hours. The Carrier denied the Claim on the basis Matuschak's assignment was in accordance with the Overtime Agreement dated March 9, 1977, and specifically Section 2(c).

According to the Carrier, Repairman Matuschak had color coded machines on Friday, January 27, 1984, in the center section while the Claimant had been assigned to the west end section marking machines. The Carrier contends its use of Repairman Matuschak was in accordance with paragraph 2(c) of the Canton Shop's Overtime Agreement dated March 9, 1977, which reads in pertinent part:

> "(c) Overtime work on rest days in connection with an operation not related to a specific machine will be offered in seniority order to the necessary number of employee who had worked in that operation on that shift (if more than a one-shift operation) on the preceding normal workday. If sufficient force is not thereby available, other available and qualified employees who normally work on that shift will be used in seniority order."

The position of the Carrier is that the Claimant did not perform the involved work the "preceding normal work day." The Organization, however, relies upon Rule 17 and views the Carrier's position erroneously holds that the Claimant's seniority was somehow limited to a particular section of the Canto" Repair Shop. Furthermore, the Organization argues the March 9, 1977, Agreement is no longer in effect by reason of the clear and unambiguous language of Appendix "B" which in relevant part reads:

> "1. The Schedule Agreements of the former component railroads and all amendments, supplements and appendices to these agreements (with the exceptions of those listed below) and all other previous agreements which are in conflict with the Agreement effective February 1, 1982, are terminated."

Despite this specific language, the Carrier contends that the 1977 Agreement does not conflict with Rule 17 or any other rule in the Agreement. Rule 17 is set forth below.

> "Employees "ill, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

Additionally, the Carrier argues that, even if Rule 17 is found to be controlling, the Claimant did not "ordinarily and customarily" color code machines in the paint area in the center section of the Canton Shop.

This Board has analyzed the disputed Agreements and finds that Appendix "B" identifies two groups of Agreements that were eliminated effective February 1, 1982. It is our conclusion that the March 9, 1977, Agreement was an amendment to the "Schedule Agreements of the former component railroads." The 1977 Agreement or Letter of Understanding was not specifically listed in the Appendix "B" as a" exception.

The disputed 1977 Agreement spelled out the parties' intent as to the application of Rule 4-E-2 of the controlling Agreement. Rule 4-E-2 states:

> "Employees residing at or near their headquarters will, if qualified and available, be give" preference for overtime work, including calls, on work ordinarily and customarily performed by them, in the order of their seniority. The provisions of this rule will not apply to such employees on their rest days during hours of their normal working day assignments."

It is obvious Rule 17 does not contain the same language as the old Rule 4-E-2. Therefore, even if by some semantic stretch one could ignore the clear implications of Appendix "B" as it relates to amendments, supplements, or appendices, the 1977 Letter of Understanding clearly conflicts with Rule 17. Rule 17 does not contain qualifying language relating to the proximity of residency and makes no mention that its provisions do not apply to "...such employes on their rest days during hours of their normal working day assignments."

The Carrier has also attempted to prove the viability of the 1977 Letter of Understanding through certain asserted practices of the parties. The Organization disputes this argument on the basis the evidence in support is conspicuously absent from the record. The Carrier insists the record shows the Canton Shop's 1977 Overtime Agreement has been applied without exception until March 23, 1984, which is some twenty-six months after the new Collective Agreement effective February 1, 1982.

Whether or not the Carrier is correct in its portrayal of the application of the 1977 Agreement, the collective Divisions of NRAB have consistently held that, in matters of language interpretation, clear and unambiguous language will be enforced and any attempt to modify such clear cut language by resort to alleged past practices is improper. It has long been held that the appropriate use of past practice is to aid in the determination of the parties' intent when confronted by ambiguous language.

In accordance with the above reasoning, this Board finds that Appendix "B", which became effective February 1, 1982, terminated the March 9, 1977, Letter of Understanding, also referred to as the Canton Shop's Overtime Agreement.

Notwithstanding, the Carrier insists that, even if Rule 17 applies, the Claimant did not ordinarily and customarily color code machines in the center section of the Canton Shop. This Board's reading of the controlling Agreement does not support this Carrier argument. Both the Claimant and Matuschak are repairmen on a Monday through Friday work schedule. We find no precedents which would allow this Board to find the phrase "...on work ordinarily and customarily performed..." applies to a specific tool or piece of equipment being repaired. The word "work" within the context of Rule 17 more aptly applies to duties repairmen ordinarily perform. In this case, it is the repair of tools, machinery and/or equipment. Both the Claimant and the junior employee Matuschak ordinarily and customarily perform the same duties at the Canton Shops. There is no probative evidence in the record which supports a finding the disputed work performed by Matuschak was not the same work ordinarily and customarily performed by the Claimant. Finally, there is no Agreement basis to subdivide Rule 17 by section or location.

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 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 13th day of July 1987.