Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28930
THIRD DIVISION Docket No. CL-29274
91-3-90-3-173

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10425) that:

1. Carrier violated the Agreement when it used junior employes to Messrs. R. P. Wickman and R. A. Keeler; namely, M. M. Cowan, W. J. Hughes and W. G. Imlay at the punitive rate of pay on the date of May 7, 1988 at the Havana Coal Transfer Plant, Hayana, Illinois.

2. Carrier's action in the instant case violated the TCU Agreement, Supplement No. 10 contained therein.

3. Carrier shall now be required to compensate senior employes Mr. R. P. Wickman and Mr. R. A. Keeler for eight (8) hours each at the punitive rate of pay of Master Mechanic for the date of May 7, 1988."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On the date of Claim, the Carrier required three (3) Master Mechanics to remain at work beyond the end of their shift at the Havana Coal Transfer Plant. This additional service was required due to the need to change a conveyor belt. Following their regular shift, the three employees worked from 3:30 P.M. to 12:00 Midnight with a thirty (30) minute unpaid meal break. The Organization submits Claimants who are Master Mechanics senior to those who worked and were observing their rest days should have been called for this overtime work.

The Organization bases its Claim on Supplement No. 10, an Agreement dated March 8, 1979. Specifically, it relies upon Section V.-O., which reads:

> "Casual or unassigned overtime, continuous with, but following the regular shift, of four (4) hours or less will be filled by continuing the regularly assigned employes on duty. If more than four (4) hours additional work is required on days where only one shift is assigned to work, employes will be called to fill needed positions as provided in Section II.-A."

Section II.A of Supplement No. 10 establishes the procedure for filling short vacancies (one day or less) among Operating (Dumping), River, Clerical Forces and Master Mechanics. It provides the following procedure for utilizing employees:

> "a. If position can be blanked it will be blanked.
>
> b. Upgrade senior qualified laborer, on that shift.
>
> c. Call senior qualified furloughed employe (Havana headquarter point), who has filed a furlough form indicating he desires to be considered available for extra and relief work and who does not have 40 hours work in the work week. (See Section V.-G. & H.).
>
> d. Call senior qualified unassigned employe at Havana, who has not yet filed a furlough form, and who does not have 40 hours work in the work week. (See Section V.-G. & H.).
>
> e. Call senior qualified employe (on other shifts), who has requested overtime work, following the procedures in Section IV. (See Section V.-I & J.).
>
> f. Call senior qualified employe (on other shifts), who has not requested overtime work, following the procedures in Section IV. (See Section V.-I. & J.).
>
> g. Emergency procedures. (See Section V.-L.)."

The Organization asserts the Carrier knew the overtime would extend beyond four hours. It furnished the Carrier with the following statement from the three employees who performed the overtime work:

> "This is a statement made at the request of Local Chairman B. P. Whitacre. On May 7, 1988, Assistant Superintendent W. Fleer asked Messrs. Imlay, Cowan, W. Hughes

> to work through the 2nd shift assisting the outside construction employes who were splicing the South Main Conveyor. Mr. G. Weaver was asked at this time if he could be available to work at midnight if needed; it was known at this time that the splicing was going to take until at least 10:30 PM. to finish."

The Organization argues the Carrier was thus required to utilize employees as if it were a short vacancy; i.e., on a seniority basis. The Claimants, it concludes, would have been entitled to have been called.

The Carrier responds by noting Supplement No. 10 was written at a time when the Havana facility was operating on a multiple shift basis. Because it was a single shift operation at the time of this Claim, the Carrier asserts the provisions of the Agreement which refer to using employees from other shifts are no longer applicable. In any case, the Carrier maintains the Claimants were not assigned to another shift. The Organization has rebutted this argument by asserting the work was performed during the hours of what is customarily known as second shift.

The Carrier cites Awards 14 and 21 of Public Law Board No. 2011, between these parties, as evidence there is no other provision regarding the allocation of overtime on a seniority basis. It further notes the Organization served a Section 6 Notice on June 29, 1981, to obtain a Rule which would provide as follows:

> "Seniority rights of employes shall govern in the filling of vacancies, new positions and displacements of junior employes, and to the performance of overtime work as provided for in this agreement."

According to the Carrier, the Organization was unsuccessful at obtaining this Rule at the bargaining table and is now seeking to obtain it through this Claim. Finally, the Carrier asserts it has regularly held employees more than four hours after their shift and has submitted payroll records to document this practice.

Our analysis of this dispute must begin with Section V.-O. of Supplement No. 10. Clearly, the service involved falls within the parameters of this provision. The work was casual or unassigned overtime in that it was not part of any employee's regular assignment. Furthermore, the facts establish it was continuous with, but following the regular work shift. Had it been for four hours or less, the Carrier certainly could have held the regularly assigned employees on duty. But, in this case, it was eight hours. Further, the unrefuted statement from the employees who performed the work establishes a presumption the Carrier anticipated the work would exceed four hours. The second sentence in Section V.-O., therefore, is applicable. More than four hours additional work was required on a day where only one shift was assigned to work. Therefore, we must look to Section II.-A. for the procedure for filling

the vacancies. This provision requires the Carrier to treat the overtime as if it were a one day, or short, vacancy.

Notwithstanding the Carrier's assertion the Agreement was written with a multiple shift operation in mind, the fact that the facility is operating on a single shift basis does not render Section II.-A. inapplicable. It is significant that the parties referred to this provision in the filling of overtime positions "on days where only one shift is assigned to work." Obviously, it was intended to apply in the case herein.

We do not agree with Carrier's argument that Claimants should not have stood for the overtime work because they were employed on the same shift as those who were held over and not "on other shifts" as specified in Paragraphs e. or f.

In a two shift operation with no furloughed employees, a short vacancy occurring on the second shift would be filled by an employee from the first shift; i.e., an employee from another shift. This would have to be the case because the second shift employees would already be at work. Thus, the term "other shifts" in this context means shifts other than those on which the vacancy occurred.

The Agreement requires calling the senior employee who was not scheduled to work during the hours the work was to be performed. In the Claim herein, none of the employees was scheduled to work during this overtime period. The Carrier, therefore, was obligated to call the senior qualified employees for the overtime.

We do not find the Carrier's payroll records to be evidence this interpretation is inconsistent with past practice. It is possible to hold employees over and still be in compliance with the Rule. For instance, some records indicate all employees worked in excess of four hours. Seniority, in such a case, would not be an issue. On other dates, qualifications or availability may have entered into the Carrier's decision to work a particular employee. Absent further information, we cannot reach any conclusions from these records.

For the reasons stated herein, we find the Agreement was violated. As Claimants did not perform service, however, they will be compensated eight (8) hours at the straight time rate in accordance with previous Awards of this Board, as well as Award 2 of Public Law Board No. 2011 between these parties.

## A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.