

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30525  
Docket No. MW-30077  
94-3-91-3-493

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (former Chesapeake  
( and Ohio Railway Company (Southern Region))

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

- (1) The Agreement was violated when the Carrier failed to call Operator J. Mize to perform overtime service on his 3-way dump truck operator position and instead assigned a trackman to operate the truck on Friday, July 13, 1990 [System File C-TC-7071/12(90-880) COS].
- (2) As a consequence of the aforesaid violation, Operator J. Mize shall be allowed eight (8) hours' pay at his time and one-half overtime rate of pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant herein is a Class C Machine Operator and is regularly assigned to operate a three-way dump truck. He is assigned to work four 10-hour days, Monday to Thursday, with Friday, Saturday and Sunday as rest days.

Part of the Organization's argument is that the Carrier unilaterally assigned the Claimant (and others in his work group) to the four-day workweek and that this is improper without consent of the Organization. The Claim, however, does not seek any change in the workweek, so no comment on this aspect is required. What the Organization did establish was that the Claimant would be working overtime if assigned to Friday work.

On Friday, July 13, 1990, the Carrier assigned another employee from a different work group to operate the dump truck. This employee was on a five-day, eight-hour schedule and thus operated the dump truck on straight time. The Organization argues that the Claimant should have been called on Friday to operate the truck. The Organization cites Rule 2(b), which reads as follows:

"(b) Service Rights.--Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway Company as hereinafter provided."

The Organization contends that Rule 2(b) covers, among other rights, the right to overtime assignment by seniority. Here, however, there is no question as to which of two or more employees should be offered overtime work, in that the employee who did operate the dump truck was on a five-day schedule and thus worked at straight time.

Beyond this, the Carrier states without contradiction that the dump truck was utilized for the work of a gang other than that to which the Claimant was assigned. As a result, the dump truck was operated at straight time by an employee of a different gang. Rule 2 (b) has no application here.

The propriety of the four-day week is not before the Board in this claim. There is no question of preference in overtime work, since the work was performed at straight time and outside the gang to which the Claimant is assigned.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.