

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31436
Docket No. MW-31331
96-3-92-3-870

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Houston Belt & Terminal Railway Company

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

- (1) The Carrier violated the Agreement when it assigned Mechanic Helper D. LeVasseur to overtime service performing mechanic's work on Truck Co. 102 on August 29, 1991, instead of assigning a mechanic to perform said work.
- (2) The Carrier violated the Agreement when it assigned Mechanic Helper D. LeVasseur to overtime service performing mechanic's work on Tamper No. 133 in Basin Yard on September 9, 1991, instead of assigning a mechanic to perform said work.
- (3) The Carrier violated the Agreement when it assigned Mechanic Helper D. LeVasseur to overtime serviced performing mechanic's work on Speedswing No. 150 on September 24, 1991, instead of assigning a mechanic to perform said work.
- (4) As a consequence of the violation referred to in Part (1) above, Mechanic M. Davis shall be compensated at his time and one-half rate of pay for the two and one-half (2 1/2) hours expended by the mechanic helper in the performance of said work.
- (5) As a consequence of the violation referred to in Part (2) above, Mechanic M. Davis shall be compensated at his time and one-half rate of pay for the one (1) hour expended by the mechanic helper in the performance of said work.

- (6) As a consequence of the violation referred to in Part (3) above, Mechanic M. Davis shall be compensated at his time and one-half rate of pay for all overtime worked by the mechanic helper in the performance of mechanic's work on the day in question."

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 Statement of Claim sets forth the basics of this dispute. On specific dates, it is alleged that a Mechanic Helper worked on specific pieces of equipment on an overtime basis that was continuous with his regularly assigned hours. This utilization of a Mechanic Helper on an overtime basis in lieu of using a Mechanic is an act that allegedly violates the Agreement.

Item 1 of the Statement of Claim contends that on August 29, 1991, the Helper worked overtime on Truck No. 102. The Carrier states that the Helper did not work on that unit on that day. This response was in the first round of claim handling. The Organization never changed its plea, nor did the Carrier change its response through subsequent handling.

The petitioner is the party that must establish a prima facie case. It has not done so insofar as Item 1 of the Statement of Claim is concerned as this Board has before it an irreconcilable dispute in facts. If the Helper did not work on the unit designated by the Organization on the claim dates, then there is no basis for the claim. Accordingly, Items 1 and 4 of the Statement of Claim are dismissed.

It is the same for Items 3 and 6 of the Statement of Claim. The Organization alleges that the Helper worked overtime working on Speedswing No. 150. The Carrier stated the Helper did not work overtime repairing Speedswing No. 150 on the claim date.

Regarding Items 2 and 5 of the Statement of Claim, the Board fails to find any support in the Rules for the Organization's position.

Carrier stated that the Helper had worked on Tamper #133 during the day and was at the location of the machine at 3:00 P.M., 30 minutes before his off-duty time. He was advised by the Operator that it still required some work, so the Helper commenced working on the machine at 3:00 P.M., and went off duty at 4:30 P.M., claiming one hour overtime.

The claim is that the Mechanic should have been assigned at 3:30 P.M. to finish up whatever was left to be done.

As stated, no Rule or practice has been cited that supports this claim. If what the Helper is doing as of the quitting time must be completed by working beyond the quitting hour, then it makes sense to continue using the employee who commenced the work to finish what he started rather than find the Mechanic and assign him to complete the work the Helper was doing, particularly when no Rule has been cited that clearly articulates that which the Organization contends.

AWARD

Claims dismissed and 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 25th day of April 1996.