

Award No. 18393
Docket No. MW-18934

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it called and used B&B Mechanics C. Boder and W. Shannon for overtime service on February 1 and 2, 1969, at the Taconite Storage Facility instead of calling and using B&B Mechanic C. W. Highland for such overtime service. (System File 12-69).

(2) B&B Mechanic C. W. Highland be allowed ten and one-half (10½) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

(3) The Carrier shall also pay the claimant six (6%) percent interest per annum on the monetary allowance accruing from the initial claim date until paid.

EMPLOYES' STATEMENT OF FACTS: The claimant is regularly assigned to a work week extending from Monday through Friday.

On Friday, January 31, 1969 and on several days immediately prior thereto, the claimant was assigned and used to perform maintenance work at and on the Taconite Storage Facility at Duluth, Minnesota, as will be noted from the following quoted letter.

"Two Harbors, Minn.
June 6, 1970

Mr. Ralph Garwood
General Chairman BMW
617 1st St
Proctor, Minn 55810

Dear Sir:

In reply to your letter of June 3, 1970 on Friday January 31st, 1969 & several days previous to that I worked at the taconite Facil-

OPINION OF BOARD: The Claimant is a Bridge and Building department employe who at the time of this claim was assigned to work at the Taconite Storage Facility at Duluth, Minnesota. Claimant worked at said facility on Friday, January 31, 1969 and for several days immediately prior.

On Saturday, February 1, 1969 at 10:30 A.M. the maintenance supervisor received a call informing him that the Taconite Storage Facility was inoperative due to the fact that the cable reel wind was inoperative.

Carrier called out two B&B mechanics who had not been working on the Taconite Storage Facility to perform the repair work which was performed on February 1 and 2. Claimant asserts that the work properly was his under Rule 14(k) (the 40 hour week rule) of the collective bargaining agreement and Paragraph (a) of the July 29, 1966 Agreement between the Organization and the Carrier dealing with the assignment of overtime. The applicable rules are as follows:

"14(k) Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe.

and July 29, 1966 Agreement:

"(a) An employee assigned to a particular job on which overtime is required will be given all the overtime connected with that assignment.

"(b) All other overtime, emergency or general, will be divided as equally as possible in a calendar year among the employees in that class of work for which overtime is necessary at the particular headquarters, subject to the ability of the employees to perform the overtime work. A record of all overtime stipulated in this paragraph shall be posted monthly and kept current with a running record of overtime worked during the month.

"(c) An employee who fails to respond when called or who is off work for any reason or who is working in a supervisory capacity shall be charged with any overtime that he could have worked during the off period or while working as a supervisor.

"(d) An employee who transfers from one headquarters to another will take the highest overtime hours of the employee in his class of work at the point to which he transfers.

"(e) If sufficient employees are not available in a particular class of work to perform necessary overtime work, the employee in the same group with the lowest number of overtime hours at the particular point, if qualified to perform the work, will be called."

The Carrier claims that it properly assigned the work in accordance with paragraph (b) of the July 29th Agreement. It further argues in the

alternative that an emergency existed which gave it broad discretionary powers in the assignment of employees to meet that emergency.

First as to the allegation of an emergency we find that it remains simply that, an allegation. There is no probative evidence of substantial value which lends weight to the Carrier's assertion that an emergency existed. The mere fact that overtime was assigned is not sufficient to support the allegation.

In its interpretation of paragraph (a) of the July 29th Agreement, Carrier asserts that the wording "particular job" refers to a specific "piece of work". In the case at bar Claimant would have to have been repairing the stacker cable reel in order to have been entitled to the overtime. This interpretation is too restrictive. It is sufficient that during the week immediately prior to the overtime work Claimant was the employee assigned to maintenance work on the Taconite Storage Facility which work admittedly from time to time required working on the cable reel level wind. Claimant was entitled to the overtime work under paragraph (a) of the July 29, 1966 Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

AWARD

Parts (1) and (2) of claim sustained; part (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.