



Award No. 18454

Docket No. MW-18984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

DISTRICT 50

ALLIED AND TECHNICAL WORKERS

WINIFREDE RAILROAD COMPANY

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex-parte submission on October 29, 1970 covering an unadjusted dispute between us and the Winifrede Railroad Company involving the question of the division of overtime and clarification of the terms "overtime" and "premium time."

EMPLOYES' STATEMENT OF FACTS: Winifrede Railroad Company is a corporation with its principal office in Charleston, West Virginia. It is engaged in the operation of a short-line railroad between Winifrede and Winifrede River Tipple, in Kanawha County, West Virginia, a total of 11.2 miles of track, including side tracks. The railroad connects with, delivers loaded cars to, and receives empty cars from the C & O Railroad at Winifrede Junction. The Railroad transports C & O Railroad cars, as well as its own cars, over its tracks, and connects with the C & O Railroad at Winifrede Junction. The railroad is subject to the jurisdiction and authority of the Interstate Commerce Commission, and that Commission exercises such jurisdiction and authority over the railroad.

Winifrede Railroad has employees, who are employed in the following job classifications: locomotive engineers (2); conductors (2); brakemen (4); section labor (4); mechanic (1); car repairmen (2); section foreman (1); superintendent (1); office clerk (1). All of these employees excepting the section foreman, superintendent, and office clerk, are represented by International Union of District 50, United Mine Workers of America, for purposes of collective bargaining with the Company; and are covered by a labor contract, dated October 31, 1968, between the Railroad Company and the Union, a copy of which is attached hereto and made a part hereof.

As stated therein, the contract between the Railroad Company and District 50 provides that the parties adopt and agree to abide by and comply with all of the wages, hours and working conditions prescribed by the National Bituminous Coal Wage Agreement of 1950, as amended October 1, 1968, insofar as the same are applicable, and except as otherwise specifically provided therein. A copy of said National Agreement is attached hereto and made a part hereof. (Contract not reproduced.)

In addition to being responsible for the direction of the entire Railroad, Mr. Brackenridge directly supervises the Locomotive Crew, and Mechanic, and Car Repairman; the Section Crew is under the direct supervision of the Section Foreman, Charles Stapleton. The driver of the Motor Truck, Everett Roush, is a member of the Section Crew.

The National Bituminous Coal Wage Agreement of 1968, Wage and Hour Section, Sub-section (k), 2nd paragraph (in part) reads: "However, such employes shall be given the opportunity to work the same number of days per week as the number of days on which the mine produces coal, and shall be given an equal opportunity to share the available work on premium days." (Emphasis ours.) There is no contract provision providing for the equal distribution of overtime work.

OPINION OF BOARD: This claim involves a dispute arising out of the failure of the Carrier to divide daily overtime equally among its employees.

There is no evidence in the record to support a past practice. Further, there is no rule in the Agreement between the parties requiring the Carrier to distribute daily overtime on an equal basis. We have held many times that this Board is without power to write a rule into an agreement where none exists.

The claim must be denied.

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.

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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