

Award No. 19109

Docket No. MSX-19138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

CESAR MENDES

REA EXPRESS, INC.

STATEMENT OF CLAIM: My case concerns overtime on Saturdays. I was denied the opportunity to work as a key punch operator on 12 Saturdays at the Computer Operations Department.

According to our controlling Agreement, Saturday is not a working day therefore and consequently the assigned employees are not supposed to report for work. But, when Management has work to be done the Manager calls the employees under an open roster on (Saturdays only) for the qualified employees.

This is the procedure in effect in other departments. I am a qualified keypunch operator since 1954. I was working on the first shift when the overtime on Saturdays started and likewise I was working on the first shift before the overtime on Saturdays started too. In view of this fact,

It is my contention that I am entitled to a momentary compensation for those twelve Saturdays.

OPINION OF BOARD: Petitioner comes before this Board contending that he was, under the Rules Agreement between his Union and Railway Express Agency, Inc., improperly denied the opportunity to work as a Key-punch Operator on twelve Saturdays in 1967 and 1968, when employees junior to him were worked. On the dates of the alleged violation—December 9, 1967, January 13, March 2, April 27, May 11 and 18, June 1 and 22, September 28, October 5 and 12, and November 2, 1968 — Claimant held the position of IBM Operator. However, he previously had worked as a Keypunch Operator; his work week was Monday through Friday and his rest days were Saturday and Sunday. He was available to work on the Saturdays involved in this Claim.

Petitioner alleges that he should have been called for the work in preference to those junior employees worked by reason of the provisions of Rules 2 (b), 3 (a) and 5 of the controlling Agreement. Rule 2 deals with Seniority and Rule 3 deals with Promotion, Assignments and Displacements. Examination of both rules fails to show how they were violated in the instant dispute. Rule 5 deals with Overtime and Calls. Rule 5 sets forth several situations under which overtime will be paid, and the amount of overtime to be paid when overtime is paid. However, Rule 5 does not establish the method by which overtime work will be assigned.

The Carrier defends not having called Petitioner on the grounds that the work involved on the twelve Saturdays was Keypunch work and, therefore, such work should be assigned to Keypunch Operators — "the regular employe(s)." Petitioner Mendes was a Machine Operator at the time and was not "the regular employe" for Keypunch work. Specifically, the Carrier cites Rule 4 (e) of the controlling Agreement which provides:

"The Management is under no obligation to fill positions on days which are not a part of any assignment, but where work is required to be performed on such a day, 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."

Under the circumstances in the instant case, we find that the assignment of Rest Day overtime Keypunch work on the days in question to employes in the Keypunch section was a proper application of Rule 4 (e).

We will, therefore, deny the claim.

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; and

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 24th day of March 1972.