

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19260
Docket Number SG-19286

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

SG-1-70. - As Mr. Martin had advised the Carrier that he would be available for work as requested, and then was denied the opportunity to work because of illness on January 23, 1970, this is an act of discrimination on the Carrier's part. We have had many instances where men were off sick and then were called to work overtime and were not penalized for being off sick on their regular tour of duty.

We, therefore, claim sixteen (16) hours at time and one-half for Mr. D. L. Martin, for work performed by a junior employee in accordance with letter dated October 9, 1969, referring to pre-determined overtime.

OPINION OF BOARD: On Friday, January 23, 1970, Claimant did not work and reported himself off due to illness. On that date he was called by Carrier's supervisor and advised to report for work at overtime rate on Saturday and Sunday, January 24 and 25. Approximately, a half hour later he was called and advised that because he was off ill, he would not be permitted to work on the 24th and 25th and that a junior employee would work in his stead. The present claim was filed on behalf of Claimant for sixteen hours overtime worked on the 24th and 25th.

It is the Organization's position that when Carrier would not allow Claimant to work the overtime, it violated the letter Agreement of October 9, 1969, as well as the time honored seniority principle. The October 9, 1969 letter Agreement reads in pertinent part:

"It was agreed by the parties on October 9, 1969, that when calling employes for pre-determined overtime the following principles would be followed:

1. When a portion of a particular gang must be worked on pre-determined overtime, those with greatest seniority will be given first opportunity on the following basis:

- a. That such employes are able and qualified for the particular job.

- "b. That such employees are members of the gang working on the project prior to the overtime date.
- c. That the scheduled overtime is a continuance of that phase of the project worked prior to the overtime date."

Carrier defends on the basis that when Claimant reported himself off sick the 23rd and stated that he would return to his assignment, Monday the 26th, he made himself unavailable for the overtime work in question and thus he had no claim to it.

We cannot agree with the Carrier's assertion that Claimant was unavailable to work on January 24 and 25. When Claimant advised Carrier's supervisor that he would accept the overtime assignment, this should have laid to rest the question of availability. He was available to work and he so stated. When he advised Carrier that he expected to return Monday, January 26, he intended, of course, that he would return to his regular assignment on the date next scheduled for him.

The letter Agreement of October 9, 1969 contemplates that pre-determine overtime, such as that herein, would be first given to those employees with the greatest seniority subject to enumerated exceptions not applicable here. What Carrier seeks to do is to add a further condition, to such Agreement, which condition has not been duly negotiated. This we cannot do. The Carrier must apply the contract as written just as the Organization must. Neither party can require this Board to change the terms thereof. For this reason we will allow 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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.