

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20367
Docket Number MW-20502

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Louisville and Nashville Railroad Company

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

(1) The Agreement was violated when an employee junior to C. L. Winemiller was permitted to work from 3:30 P.M. on July 13, 1972 to 3:30 P.M. on July 14, 1972 instead of using C. L. Winemiller who was senior, available and willing to perform that service. (System File 1-12/E-265-18 E-265)

(2) As a consequence of the aforesaid violation, the Carrier shall now pay C. L. Winemiller the exact amount of pay he would have received if he had been permitted to perform the work mentioned in Part (1) above, i.e., 15-1/2 hours at double time and the difference between double time and straight time for the period from 7:00 A.M. to 3:30 P.M. on July 14, 1972.

OPINION OF BOARD: Claimant was regularly assigned to work from 7:00 A.M. to 3:30 P.M. Mondays through Friday. Because of a derailment on July 12, 1972, Claimant and other employees were called for overtime and reported at 9:30 P.M. Claimant worked continuously from 9:30 P.M. on July 12, 1972 until 3:30 P.M. on July 13, 1972, at which time he was sent home.

Carrier determined, at about 2:00 P.M. on July 13, 1972, that it required an employee to serve as a watchman during the period 3:30 P.M. July 13 to 3:30 P.M. July 14. Carrier assigned the watchman duties to an employee junior to Claimant. (The junior employee had not reported for duty at 9:30 P.M. on July 12, 1974, but rather at his regular starting time of 7:00 A.M. on July 13).

Claimant asserts that he should have been afforded the opportunity to serve as watchman, and receive the premium pay, under Rule 30(f):

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

Carrier states that the Foreman was asked by the Roadmaster if any of his men wanted to remain as watchmen on the night of the 13th of July and that the Foreman replied that none of the men that had worked all night wanted to stay. As a result, the junior employee (who had not worked the previous night) was requested to stay as watchman.

We feel that Rule 30(f) is clear. It contains no exceptions, other than availability which is not in issue here. We may not alter the Rule by adding exceptions. While the parties have engaged in certain speculation as to amounts of sleep the employees may or may not have had, we are of the view that said speculation is gratuitous. Both in the submission and in the Reply, Carrier conceded that if the Roadmaster had directed the Foreman to keep the junior employee on duty, then it would have been liable to pay for its error. But, Carrier seeks to avoid payment because it relied upon the Foreman's statement, and it had a right to assume that the Foreman had talked to his men about the possibility of staying as watchmen before the Foreman advised that none desired to stay.

While the record confirms that the Foreman did, in fact, state that none of the employees desired to stay, the record contains no evidence to contradict Claimants' statement that he was never asked by the Foreman if he desired to stay and work the overtime.

The Organization has cited a number of Awards to demonstrate that the Carrier's business can only be performed by its agents and if the employee performs work in furtherance of the master's business, the master is liable. See for example Award 7190 (Carter) wherein it was noted that any violation of an agreement ordered by a foreman is a violation by the Carrier. While the factual circumstances of the cited Awards are not identical to those in this record, the Board feels that the Foreman here could not set aside the agreement Rules insofar as Claimant was concerned. We will sustain 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of August 1974.