

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21585  
Docket Number CL-21412

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Norfolk and Western Railway Company

PARTIES TO DISPUTE:

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7958) that:

1. Carrier violated the Agreement between the parties when they refused to allow punitive pay for work performed outside E. D. Kerns' regularly assigned hours on the following dates:

10/14/73 - Four (4) hours  
10/15/73 - 15 Minutes 6:45 A.M. to 7:00 A.M.  
One (1) hour 3:30 P.M. to 4:30 P.M.  
10/16/73 - One (1) hour 6:00 A.M. to 7:00 A.M.  
One (1) hour 3:30 P.M. to 4:30 P.M.  
10/17/73 - One (1) hour 6:00 A.M. to 7:00 A.M.  
One (1) hour 3:30 P.M. to 4:30 P.M.  
10/18/73 - One (1) hour 6:00 A.M. to 7:00 A.M.  
One (1) hour 3:30 P.M. to 4:30 P.M.  
10/19/73 - One (1) hour 6:00 A.M. to 7:00 A.M.  
One (1) hour 3:30 P.M. to 4:30 P.M.  
10/20/73 - Three (3) hours call-out  
10/21/73 - 5-1/3 hours Sunday call-out  
10/22/73 - 5-1/3 hours Holiday call-out  
10/27/73 - Three (3) hours call-out  
10/28/73 - 5-1/3 hours Sunday call-out.

2. Claimant shall be paid the overtime claimed.

OPINION OF BOARD: On eleven of fourteen consecutive days in October 1973, Storekeeper E. D. Kerns, witnessed by other employes, performed overtime work outside his assigned hours, on his rest days, and on one holiday, for which he claimed no payment. On December 6, 1973, the Organization's local chairman filed a claim in his behalf for time and one-half payment for the additional time worked. Carrier defends against payment therefor on the basis that no claim was submitted by Claimant whose overtime, in any event, was a voluntary performance of service without authority which cannot be used as a basis of a claim.

In our Award 16837 (Devine) we stated:

"This Board has held on numerous occasions that absent directions and authority, voluntary service cannot be asserted to support a claim. In the opinion of the Board, that principle is applicable here. The Claimant had been advised by his superior on February 16, 1966, that overtime would not be allowed consistently on the Night Chief Dispatcher assignment. The Claimant was not instructed or required by proper authority to put in the overtime claimed. The claim will be denied."

Award 18012 (McGovern) denied an overtime claim when claimant performed work on his own volition, holding:

"It is a managerial prerogative to determine when work is to be performed, as exemplified in many of our awards. To permit an employe to work overtime whenever he himself deems it necessary, is an unwarranted encroachment on Management which, if unchecked, could only lead to chaos. We, therefore, find no violation, and will deny the claim."

We basically affirm these holdings; however, here there appears to be more involved. In a brief two-week period the storekeeper performed 35 hours and 15 minutes of overtime for which he filed no claim. To stop this practice and to police the agreement, the Organization filed a claim. The comments in our Award 18012 suggesting that to allow an employe to work overtime whenever he himself deems it necessary can only lead to chaos must be applied with equal force both ways. While we do not intend to inhibit extra or superior completion of assigned tasks, if these duties cannot be completed within regular hours, they should be paid for at overtime rates. While management has the right to authorize overtime, it also has the right to prohibit overtime unless it is authorized. We will deny the claim with the recommendation that the practice complained of, now known to Carrier, be discontinued.

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

The agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.