

THIRD DIVISION

Award Number 24500
Docket Number CL-24604

Edward L. Suntrup, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Canadian Pacific Limited - Atlantic Region, Lines in
(Maine and Vermont

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(CL-9622) that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when, on April 5, 1981, it failed to use the proper employee to perform work required on the unassigned rest day of the second shift Operator position at Brownville Junction, Maine.

2. Carrier shall, as a result, compensate Extra Operator D. J. Martin, eight (8) hours pay at pro rata rate of second shift Operator position at Brownville Junction for April 5, 1981.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when, on May 3, 1981, it failed to use the proper employee to perform work required on the unassigned rest day of the second shift Operator position at Brownville Junction, Maine.

2. Carrier shall, as a result, compensate Extra Operator G. C. Baird, eight (8) hours pay at pro rata rate of second shift Operator position at Brownville Junction for May 3, 1981.

OPINION OF BOARD: On Sunday, April 6, 1981 and again on Sunday May 3, 1981 the Carrier required certain train order work to be done at Brownville Junction, Maine between the hours of 1400 (2:00 PM) and 2200 (10:00 PM) when no regularly assigned or relief employee was on duty working the second shift. On the two days involved in the instant claims the required train order work was completed by having the first trick operator remain on duty an extra hour and by calling out the third trick operator an hour early. It is the contention of the Organization that Carrier procedures in both of these instances represented a violation of Article 17.5 of the current Agreement between the parties.

Article 17.5 reads:

"When work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will not otherwise have forty (40) hours of work that week; in all other cases by the regular employee."

The Board agrees with the Organization. The record indicates that the shifts involved were not part of a specific assignment. As such they were unassigned days and Article 17.5 gives first preference of work on unassigned days to an extra or an unassigned employee.

Board decision herein is in accord with Decision No. 2 of the Forty Hour Week Committee cited by Petitioner and numerous other Awards of the Board (See, for example, Third Division Awards 15328; 10713; 10575 inter alia).

The record before the Board shows that the Claimants in both cases were extra operators who did not have forty (40) hours work in the weeks in question, and as such, they should have been called to perform the work and their claims for a day's pay at pro rata rates should be sustained.

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

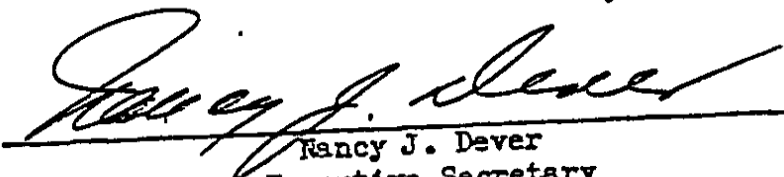
That the Agreement was violated.

A W A R D

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois this 3rd day of August 1983.

