

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30156
Docket No. MW-28424
94-3-88-3-215

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Duluth, Missabe and Iron Range Railway Company

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

1. The Carrier violated the Agreement when it assigned junior furloughed employees instead of regularly assigned employees A. Sanoski, J. Sjoquist and D. Nettleton to perform overtime service on December 23, 1986, (Claim No. 4-87).
2. As a consequence of the aforesaid violation, Messrs. Sanoski, Sjoquist and Nettleton shall each be allowed eight (8) hours of pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The level of operation at the Carrier's Dock and Storage Facility is seasonal. On December 18, 1986, - approximately one week prior to the incident giving rise to the dispute - the Carrier reduced forces when it canceled the second and third shifts at the Duluth Lakehead Storage Facility.

Claimant Nettleton held the position of B&B Foreman. Claimants Sjoquist and Sanoski held B&B Storage Facility Mechanic positions. On the dates involved in this matter, Claimants, who had not been furloughed, were assigned to the 8:00 A.M. to 4:30 P.M. tour.

On December 23, 1986, the Carrier called furloughed Mechanics D. Michael and R. Harvey to perform service in connection with the unloading of the ore ship 'Columbia Star' beginning at 4:00 P.M. At midnight, Michael and Harvey were directed to discontinue work and furloughed Mechanics P. Sullivan and T. Dillon were brought in to complete the duties relating to unloading the ship until 8:00 A.M. These furloughed employees were used rather than assigning Claimant's overtime for duties related to unloading the ship. The Claim asserts that Claimants should have been assigned the work as overtime.

Rule 20(a) provides that "During the regular assigned workweek, an employee assigned to a particular job during the workday at a point where overtime is required continuous with his shift will be given all the overtime connected with that job." Here, as a result of the need to unload the ship at a time when the second and third shifts had been canceled, overtime was required for the non-furloughed Claimants. By its clear terms, because the work was "continuous with [their] shift," Rule 20(a) required that the Claimants "will be given all the overtime connected with that job" [emphasis added]. By failing to assign the overtime to Claimants, the Carrier thus violated Rule 20(a).

The Rules cited by the Carrier do not clearly apply to this situation as does Rule 20(a). The result may appear harsh to those employees who were recently furloughed. However, the result in this case is dictated by the clear language of the relevant rule and the fact that the Carrier earlier canceled the shifts of the employees who otherwise would have been entitled to perform the work on their regular tours had they not been furloughed. This Board does not have the authority to change the relevant clear language in order to achieve a result of equitable distribution of work opportunities to recently furloughed employees. The clear language governs.

Because Claimants lost an overtime opportunity, they shall be compensated for that loss at the appropriate overtime rate as set forth in the Claim.

A W A R D

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.