

PUBLIC LAW BOARD NO. 1844

AWARD NO. 9

CASE NO. 2

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on August 8, 1975, a trackman junior to Trackman W. L. Krause was used for eight (8) hours of overtime service at his time and one-half rate and for five and one-half (5 1/2) hours of overtime service at his double time rate (System File 81-1-228).
- (2) As a consequence of the aforesaid violation, the Carrier shall allow Trackman W. L. Krause eight (8) hours' pay at the trackman's time and one-half rate and five and one-half (5 1/2) hours at the trackman's double time rate."

OPINION OF BOARD:

There is no contested issue of fact in this case. Claimant was a regularly assigned member of a track gang which was called out to the scene of a derailment to perform track repair work on August 8, 1975. The Roadmaster passed over him and called junior men in the gang instead to perform the work. The record shows that the men who did work performed some thirteen and one-half overtime hours of work and were compensated accordingly under Rule 31. That Rule reads in pertinent part as follows:

"Rule 31 -- Calls

"Employes called to perform work not continuous with regular work period will be allowed a minimum of two hours and forty minutes at rate and one-half, and if held on duty in excess of two hours and forty minutes will be compensated on a minute basis for all time worked.

"Double time compensation will be allowed on actual minute basis after sixteen hours of work in any twenty-four hour period computed from the starting time of employee's regular shift on his regular work day.

"When necessary to call men under this Rule, the senior available men in the gang will be called."

The claim was presented on September 11, 1975 and progressed without settlement. Several collateral issues were discussed on the property but the issue was narrowed and by the time the case reached our Board the only remaining question is whether claimant should receive straight time or the applicable rates prescribe by Rule 31 as damages for the violation.

As we review the record there is no question that the Roadmaster violated Rule 31 by failing to call Claimant thereby depriving him of the opportunity to perform the overtime work. Carrier has cited certain precedents to support its position that Claimant may not receive more than straight time damages because he did not in fact perform the work. In our considered judgment this argument in the facts and circumstances of the present case smacks of boot strapping and is not consistent with the principle of compensatory damages. It is not refuted on the record that Claimant personally informed the Roadmaster of his availability and desire to work on the derailment. We need not speculate whether Claimant might have been available or might have worked had the Roadmaster called him as Rule 31 requires. Given these facts there is no doubt that but for the violation Claimant would have performed thirteen and one-half hours of work at the rates payable under Rule 31. The appropriate remedy in this case is payment of the compensation he would have earned but for the violation and such a result is dictated under the make whole theory of compensatory damages. Accordingly we

shall sustain the claim. See Awards 13738, 15048, 16254, 16481, 20801, 20803, 20804, 20466, 20912.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

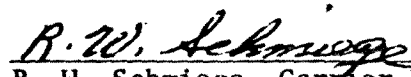
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was violated.

AWARD

The claim is sustained.


Dana E. Eischen, Chairman


O. M. Berge, Employee Member


R. W. Schmiede, Carrier Member

Dated: Aug 15, 1977