

PUBLIC LAW BOARD NUMBER 3932

Award Number: 15
Case Number: 15

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of T. Reid for time made by K. Moore.

Mr. Moore was utilized to drive the fuel truck to Macus Hook to fuel machinery. Mr. Moore performed these duties from 8:30 A.M. to 1:00 P.M. on February 17, 1984. Since Mr. Reid's awarded position is fuel truck driver, he should have been utilized to perform this work ahead of Mr. Moore.

In light of this violation of Rules 55, 56, I am requesting 4 hours at time and one-half for Mr. Reid. Please advise if this claim will be honored and the pay period in which it will be awarded."

FINDINGS

By letter dated March 17, 1984, the Organization filed Claim on behalf of Claimant seeking compensation on the basis that Carrier violated the Agreement when it allowed another employee to perform service on February 17, 1984 to which Claimant was entitled.

The issue to be decided in this dispute is whether Claimant was entitled under the Agreement to perform the work in question.

The position of the Organization is that Carrier violated Rules 55 and 56 of the Agreement when it allowed another employee (Mr. K. Moore) to perform service to which Claimant was entitled.

The Organization initially alleges that Claimant, whose regular position is truck driver, was entitled to perform the truck driving duties in question. The Organization further alleges that Moore's regular position is not truck driver, and that he was clearly not the senior qualified employee entitled to the work as required by Rule 55.

The Organization additionally argues that Carrier violated Rule 56 which states "An employee will not be required to suspend work...for the purpose of absorbing overtime." The Organization alleges that since there was no first trick truck driver available at the time, Carrier in effect suspended Claimant's work for the purpose of absorbing overtime. The Organization additionally alleges that Carrier suspended Moore's normal duties in order to allow him to absorb Claimant's overtime, also in violation of Rule 56.

Finally, the Organization maintains that the compensation requested is not excessive, since Claimant was entitled to work at the overtime rate pursuant to Rule 55 on the date in question.

The position of the Carrier is that the Organization has failed to establish Claimant's entitlement to perform the work in

question, and has therefore failed to show any basis for the compensation sought.

Initially, Carrier maintains that neither Rule 55 nor Rule 56 supports the Organization's claim. Carrier argues that neither rule applies under the facts presented, since Moore worked on a straight time basis, not an overtime basis. Carrier argues that neither rule requires it to call in an employee to perform overtime when a qualified, on duty employee is available. Carrier further argues that Rule 56 is inapplicable, since no overtime was worked and since neither employee was required to suspend work to absorb overtime. Carrier contends that Moore, who was available and qualified to perform the work during his regular tour of duty, was therefore properly utilized.

Finally, Carrier maintains that if the Claim is found to be valid, it is nonetheless excessive in regard to compensation requested. Carrier contends that there is no basis for compensation at the punitive rate, since Claimant did not perform any service; and that the Agreement does not mandate such payment under the circumstances.

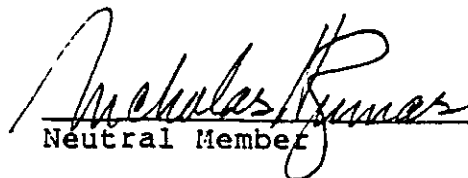
After review of the record, the Board finds that the Organization's claim must be denied.

We find that the Organization has failed, as per its burden, to establish that Claimant was entitled under Rule 55 to perform

the work. It is undisputed that Moore was qualified to perform the service. It is further undisputed that Moore performed such service during his regular shift, not while on overtime. Therefore, we fail to find any justification under Rule 55 for the compensation requested, since there was in effect no "overtime work" to be performed. Similarly, we find Rule 56 inapplicable, since neither Claimant nor Moore were forced to suspend work in order to absorb overtime. Rule 56 is clearly not designed to prevent a situation where, as in the present case, Carrier uses a qualified employee during his regular tour of duty to perform service on a position other than his regular one. Rule 56 would be applicable if Carrier had taken Claimant off his regularly assigned position for the purpose of requiring him to perform the work of an employee who would otherwise be entitled to overtime. Further, if Moore was not qualified to perform the work, Claimant might be eligible under Rule 55 to perform overtime service. However, under the facts surrounding this case, it is clear that neither Rule 55 nor Rule 56 were violated through Carrier's actions.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

DATE: 8-26-86