NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5732

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)	
	)	Case No. 2
and	)	
	)	Award No. 1
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY	)	
	)	

Martin H. Malin, Chairman & Neutral Member
Donald D. Bartholmay, Employee Member
John H. Young, Carrier Member

Hearing Date: April 27, 1995

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned junior furloughed employes instead of regularly assigned employes E. Hudacek and C. H. Bloomquist to perform overtime service continuous with their shift on Monday, January 17, 1994 (Claim No. 6-94).

3. As a consequence of the violation referred to in Part (1) above, Messrs. E. Hudacek and C. H. Bloomquist shall each be allowed eight (8) hours' pay at their respective time and one-half rates.

FINDINGS:

Public Law Board No. 5732, upon the whole record and all the evidence, finds and holds that Employees and Carrier are employees and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimants are laborers whose regular shift was Monday through Friday, 7 a.m. to 3 p.m. On January 17, 1994, a Monday, Claimants worked their regular shift, performing snow removal. At the end of their regular tour of duty, Carrier required Claimants to stop working, even though

Claimants made known their availability to continue the snow removal work. Instead, Carrier called two furloughed junior employees to perform snow removal work beginning at 3 p.m. On the date in question, Carrier did not employ a second shift of laborers.

The Organization contends that Carrier violated Rule 20(a) by assigning the snow removal work to the furloughed employees on a straight-time basis instead of giving it to Claimants as overtime. The Organization relies on Third Division Award No. 30156.

Carrier concedes that Third Division Award 30156, if followed, would require that the claims be sustained. Carrier urges this Board not to follow Award 30156. Carrier argues that the award is inconsistent with generally accepted principles and that it misconstrues Rule 20(a).

Carrier contends that Rule 20 determines how to assign overtime. Rule 20(a) deviates from the assignment of overtime by seniority in situations where the overtime work is continuous with an employee's shift and connected with that employee's job. In Carrier's view, Rule 20(a) does not guarantee that any work will be performed as overtime.

Carrier maintains that it is a well-recognized principle that management has the right to determine when overtime is required and that management need not have work performed as overtime if it can have other employees perform it on a straight-time basis. Carrier further argues that Rule 15(K) expressly allows it to allocate work that is not part of any assignment to an available extra or unassigned employee who otherwise would not have forty hours of work that week. Furthermore, Carrier contends that its action in recalling furloughed employees is consistent with the overall intent of the agreement that overtime is the least desirable method of accomplishing the work, particularly when there are employees on furlough or working less than a full week. Carrier states that it does not lightly ask this Board to decline to follow Award No. 30156, but characterizes the award as creating a conflict within the agreement and as not entitled to much precedential weight.

Rule 20(a) provides:

> 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.

Carrier's arguments in support of its position that this rule does not require that any work be done as overtime are not without force. Rule 20 is entitled, "Division of

Overtime," suggesting that its basic purpose is to instruct how to assign work once that work has been determined to be overtime. However, as Carrier concedes, we are not writing on a clean slate.

Third Division Award No. 30156 involved the identical issue and the identical parties. In that case, furloughed mechanics were called to perform work in connection with the unloading of an ore ship, instead of keeping the regular employees beyond their shifts to perform the work. The Third Division held:

> [A]s 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).

This Board is extremely reluctant to refuse to follow a decision rendered only one year ago involving the identical rule, issue and parties. To do so would be inconsistent with the finality of that award. It would leave the parties in a precarious position. They would face inconsistent awards and would not know which award to abide by. Such a decision would only guarantee that there would be additional claims and would undermine the purpose of having written rules which are designed to guide future conduct. This Board should not lightly leave the parties in a position where their future conduct will depend on the "luck of the draw" as to which referee they get in a particular claim. Therefore, in the absence of an overriding conviction that it is palpably wrong, we should abide by Award No. 30156.

Our review of Third Division Award No. 30156 convinces us that we should follow it. Carrier's position that Rule 20(a) does not apply until Carrier has made a determination that certain work must be performed as overtime is a reasonable interpretation of Rule 20(a). However, the interpretation made in Award No. 30156 is also reasonable. The language of Rule 20(a) can rationally be read to mean that where work is assigned to a particular job, that work continues with no break beyond the shift of the employee regularly assigned to that job and there is no subsequent shift containing employees regularly assigned to that job, then, because the work is connected with the regularly assigned employee's job, it continues as overtime which must be given to that employee. In other words, the Third Division could rationally conclude that under Rule 20(a), once work has been assigned to a particular job, it continues to be that job's work, and if no other regularly

assigned employee is available to perform that job, the employee who was performing it at the end of his shift must continue to perform it as overtime. For the reasons stated above, we consider ourselves bound by Award No. 30156.

AWARD

Claim sustained.

ORDER

Carrier is ordered to make this award effective within thirty (30) calendar days of the date two or more members of this Board affix their signatures hereto.

Martin H. Malin, Chairman

John H. Young,
Carrier Member

Donald D. Bartholmay,
Employee Member

Dated at Chicago, Illinois, June 6, 1995.