

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employes
TO
DISPUTE: and
Western Maryland Railway Co.

STATEMENT Claim on behalf of Mechanic C. E. Shahan, headquartered
OF CLAIM: at Maryland Junction, West Virginia, for overtime
hours worked by "junior" Mechanic S. H. Weslow on
machinery assigned to Surfacing Unit #95 and Tie Unit
#91 headquartered at Bayard, West Virginia during the
period September 26 through October 21, 1977.

FINDINGS: By reason of the Agreement dated June 14, 1979, and
upon the whole record and all the evidence, the Board
finds that the parties herein are employe and carrier within the
meaning of the Railway Labor Act, as amended, and that it has
jurisdiction.

Employes here, too, raise the conference issue. The
facts on this issue are comparable with those raised in Docket No. 2
which were thoroughly discussed by this Board in Award No. 2.
The arguments and conclusions reached in said Award No. 2 are
applicable here. For the reasons stated in said Award No. 2,
the conference issue is decided in favor of the Carrier.

No rule exists describing how overtime work shall be
assigned. Seniority is not necessarily the criteria for overtime
work assignment. The parties agree that each employe assigned to
line of road work completes the work started by him that day when
overtime is required. And this is so irrespective of that
employe's position on the seniority list. It is also true that
while preference to jobs may be and are given to senior employes,
the Carrier may and has compelled employes to work on jobs in
their classifications irrespective of their seniority position.
Seniority is crucial only when there are not enough jobs available
for all eligible employes. In that case, senior employes are
assigned the available positions.

Here, Claimant Shahan had a seniority date of March 13, 1961 and S. H. Weslow had a seniority date of August 18, 1969. On each of the claim dates, Weslow and Shahan were each assigned to positions within each of their crafts. Weslow, on each of the claim dates, worked overtime on the position to which he was properly assigned. That, clearly, is in accordance with the agreed practice on the property.

Employees contend, however, that because Weslow worked overtime on three successive days in September, two and again five successive days in October and five successive days in November (all in 1977) that this was not casual overtime. The Carrier, say the Employees, knew or should have known that overtime would be worked in that position and that, therefore, the senior employee, the Claimant, should have been assigned to that position on the claim dates.

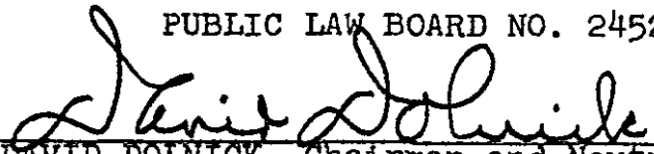
Employees' position is fallacious. First, no rule obligates the Carrier to assign a senior employee to a position because more overtime may be earned. Second, there is no showing that the Claimant ever requested an assignment to that position on the claim dates. Third, without a normal shift assignment to that position, the Claimant had no right to overtime work only. Fourth, the mere fact that Weslow worked overtime on two or three or five successive dates during the entire period is not proof certain that the Carrier knew overtime would be worked each successive date. Generally, overtime cannot be accurately predicted on this type of work.

For all these reasons, the Board finds that the claim has no merit.

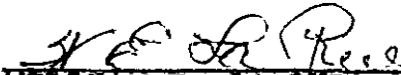
AWARD

Claim denied.

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DAVID DOLNICK, Chairman and Neutral Member


W. C. COMISKEY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980