

Award No. 7
Case No. 18

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated the current Schedule Agreement when claimant, a machine operator, was assigned to operate other than his awarded position and was not called to assist in repairs of his Crane BC-3 on October 29, 1978, but instead junior Machine Operator Dubensky was used to perform these duties.
2. Carrier shall compensate claimant for 9½ hours at the appropriate rate of pay as a Class "A" Operator for such violations.

FINDINGS:

On October 29, 1978, Machine Operator Dubensky was called to assist in repairs to Crane BC-3; in performing that work, he received 9½ hours overtime. He had operated that crane from October 18 through 27, 1978.

Mr. Dubensky is junior to claimant in point of service. Claimant had been operating the crane prior to October 18, 1978, but had been taken off it during the October 18 through 27

period and placed on other machines because of his greater familiarity with the operation of those machines. Mr. Dubensky was placed on the BC-3 crane because he was not so familiar with the machines that claimant was called upon to handle.

Rule 18(b) reads as follows:

"Where work is required by Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

In Petitioner's view, claimant is "the regular employee" and therefore is entitled to the overtime work in question on the BC-3 crane. It contends that he should not be deprived of overtime on his regular assigned position merely because he had been ordered to handle other work because of his greater expertise with such work.

Petitioner's reasoning possesses considerable appeal and we would sustain this claim if the parties had not entered into the following agreement on November 8, 1974.

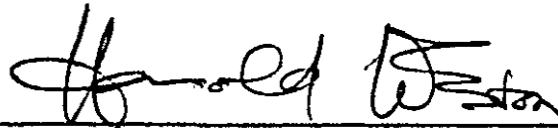
"...regular employee as referred to in Rule 18(b) shall mean the employee who has been working the position to which overtime work accrues and either is the regularly assigned incumbent of the position or the employee who has been assigned to fill a temporary vacancy on the position."

Unlike claimant, Mr. Dubensky had been working the position in question for ten days immediately prior to the call for the overtime in question; he was filling a temporary vacancy occasioned by claimant's assignment to other equipment. Accordingly,

Carrier could call either claimant or Mr. Dubensky for the overtime. We are not in a position to consider the equities of the situation and must, only because of the language of the November 8, 1974 agreement, deny the claim.

AWARD: Claim denied.

Adopted at Baltimore, Maryland, *February 2* 1983.



Harold M. Weston, Chairman


Carrier Member
Employee Member