

PUBLIC LAW BOARD NO. 2960

AWARD NO. 124
CASE NO. 170

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it denied overtime work to Section Foreman R. L. Sheldon on Saturday, February 25, 1984.

(2) Because of the aforesaid violation, Section Foreman R. L. Sheldon shall be allowed eight (8) hours at his respective time and one half rate of pay.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On April 11, 1980 the General Chairman filed the instant claim before the Board. The claim asserted that three junior employees had worked overtime on the Claimant's assigned territory. The claim also alleged the following:

"On February 24, 1984, Claimant Sheldon was notified to report for overtime work on his assigned rest day of

February 25, 1984. Claimant Sheldon was notified by telephone during the night of February 24th that no overtime would be worked due to the division's budget. This call was misleading, as three junior employees worked 8 hours each on February 25, 1984, on Claimant Sheldon's assigned territory. Claimant Sheldon is assigned to the Foreman position on the Clarion Section.

"When Claimant Sheldon approached Roadmaster Johnson on the subject of junior employees working overtime on his assigned territory, he was informed that the territory limits of the Clarion Section was changed. This occurred after February 25th and Mr. Johnson sent Claimant Sheldon a letter confirming the change in territories. However, it appears that Mr. Johnson back dated his letter as the envelope it was sent in shows that it was mailed on February 29, 1984. Furthermore, I have been informed by Mr. S. C. Lien that he was not informed of the addition to his territory until February 27, 1984, or after the rail was changed on February 25, 1984."

The Carrier responded to the claim by asserting that:

"On February 22, 1984, Roadmaster Johnson verbally told Mr. Sheldon, that because of the test car rail change-out, that his territory from Eagle Grove to Vincent would be assigned to the Eagle Grove Section Gang. On February 23, 1984, Mr. Johnson, again, instructed Mr. Sheldon that he no longer had from Vincent to Eagle Grove on his territory. On February 24, 1984, Mr. Johnson was instructed by the Division Headquarters not to work on rail change-out unless the rail were considered critical. At this time, Mr. Johnson instructed Mr. Sheldon that the rail on his section was not critical and overtime would not be required.

"Your statement, about three (3) junior employees working, is incorrect, although you failed to mention the names of any employees or their seniority.

"It is our position that Mr. Johnson had a good reason to change the Section Gang territories and did not call junior employees from Mr. Sheldon's gang or territory to work on February 25, 1984."

From this point on the Parties, in terms of facts, relied on the above noted assertions.

The Union claims that local supervision in changing the Claimant's territory limits was simply engaged in maneuvers after the fact to avoid the claim. In this regard, they note the letter advising the Claimant of the change wasn't postmarked

until February 29. They also argue that in any event the notice to the Claimant of the change in his territory was improper since they claim Rule 12 mandates at least five days advance notice. Rule 12 (a) reads as follows:

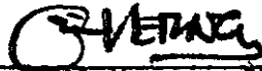
"When positions are abolished the employees affected shall be given not less than five (5) working days notice in writing prior to the effective date of abolishment, with copy of same furnished to the General and Local Chairman. Such notice shall include the name of the permanent assignee of the position at the time abolished and the name of the employee filling the position at the time abolished (if differed)."

It is the opinion of the Board that the claim cannot be sustained. Regardless of the alleged application of Rule 12 (which applies to force reductions) to a situation where only territory limits are being changed and regardless of when the Claimant was advised of this change, the Union has not established with sufficient certainty that three junior employees worked overtime on his old or new territory. The establishment of this fact would be requisite to any sustaining award. The Carrier claimed junior employees did not work overtime and the Union has provided nothing, not even the names of these alleged junior employees, to rebut this.

In view that the necessary and essential facts are absent in this record, the Board finds the Union has not met their burden and the claim is denied.

AWARD:

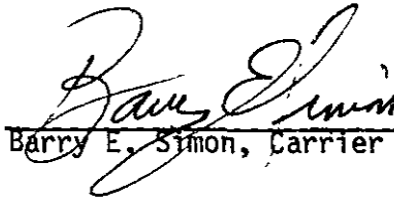
The claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Sept. 10, 1987