

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Heavy Duty Truck Driver H. R. Brittingham for 8 hours pay at his time and one-half rate of pay account junior in seniority employee used on overtime basis and Claimant not called nor allowed to work." (MW-85-85)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The question at issue here concerns a determination as to whether the Claimant, a Heavy Duty Truck Driver, upon being called in seniority order at 1:30 P.M. for overtime work as a speed swing operator, and having refused such call on the basis "he had company," still stood for overtime work at 5:00 P.M. when an employee junior to Claimant was called to work as a heavy duty truck driver to haul material to a derailment.

It is the position of the Organization that by failing to call or allow the Claimant this latter overtime work and by the use of a junior employee the Carrier was in violation of current Agreement rules, including, but not limited to Article 2, 6, 8, 16 and 17.

The Organization maintains that when Claimant was called at 1:30 P.M. he was not called to perform machine operator's duties, but was essentially asked if he wanted to perform track work, which is not his regular assignment, and refusal of such work did not relieve the Carrier of the contractual obligation to have thereafter called Claimant to operate his heavy duty truck on an overtime basis.

It is the Carrier's contention that it is a long and well established principal that a carrier may not be penalized by a call payment when the employee on whose behalf the claim is made is not available. It also maintains the Organization has not met the burden of proof of its contentions.

In the Board's opinion, we think the Carrier correct in holding


that the Organization has failed to show sufficient probative evidence to meet the burden of proof of its contentions. Mere reference to the overall rules that a violation has occurred is not sufficient to establish a proper basis for a claim.

In the circumstances of record, and it being readily evident that Claimant had indicated on the date in question that he did not want overtime work because he had company, the claim will be denied. In this respect, we would note that not only do we find that the Carrier has properly objected to the late introduction by the Organization of a signed statement from the Claimant suggesting that he had indicated at the time of the initial call that he would operate his own truck if called, but that the lateness of such a statement tends to support the belief that it was subsequently recognized that absent such a suggestion that there was strong reason to believe Claimant had in fact left the impression with the caller that he would not be available the rest of the day in question because he had company.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


M. A. Christie
Organization Member

Branson, MO
May 19, 1986