

PUBLIC LAW BOARD NUMBER 3932

Award Number: 12
Case Number: 12

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of D. Alley, EWE, for time made by D. Cirone, Welder Helper.

On February 29, 1984, Mr. Cirone was used to operate the burro crane at Zoo and S. Penn. Operation of the burro crane is Mr. Alley's awarded position and he should have been utilized first on an overtime basis.

Under Rule 55, 56, I am claiming 8 hours at time and one-half for Mr. Alley."

FINDINGS

By letter dated March 17, 1984, the Organization filed claim on behalf of Claimant seeking compensation on the grounds that Carrier violated the Agreement when it allowed another employee to perform service to which Claimant was entitled on February 29, 1984.

The issue to be decided in this dispute is whether Claimant was entitled under the Agreement to perform the work at issue on the date specified.

The Organization contends that Carrier violated Rules 55 and

56 of the Agreement when it allowed a Welder's Helper (D. Cirone) to operate a burro crane on the date in question. The Organization alleges that the burro crane is customarily operated by Claimant and that Claimant was entitled under the Agreement to operate it.

Initially, the Organization contends that Carrier was obligated to use Claimant under Rule 55, since Claimant was the senior qualified employee entitled to perform overtime on the burro crane. The Organization argues that it is uncontested that Claimant held the position of Burro Crane Operator while Cirone did not hold that position, and that therefore Rule 55 entitled Claimant to the work.

The Organization further argues that Carrier violated Rule 56 which states, "An employee will not be required to suspend work, after starting any daily assigned working period, for the purpose of absorbing overtime." The Organization alleges that Carrier suspended Claimant's working period on the date in question for the purpose of "absorbing overtime". The Organization further alleges that the normal burro crane operator on Cirone's shift did not report for work on the date in question. The Organization contends therefore that Carrier was obligated to use Claimant to perform burro crane service on Cirone's shift. The Organization asserts that Carrier suspended Cirone's normal duties in order for him to absorb Claimant's

overtime, also in violation of Rule 56.

Finally, the Organization contends that the compensation requested is not excessive, since Claimant would have been utilized on his rest day had Carrier not violated the Agreement.

The position of the Carrier is that the Organization has failed to establish any violation of the Agreement.

Initially, Carrier contends that neither Rule 55 nor Rule 56 is applicable to the claim at hand. Carrier maintains that Cirone performed his regular tour of duty on the date in question, and did not perform overtime. Carrier therefore maintains that Rules 55 and 56, concerning overtime service, are totally inapplicable under the facts surrounding this claim.

Carrier contends that the rule applicable to this dispute is Rule 58 which states, "An employee may be temporarily...assigned to different classes of work within the range of his ability." Carrier therefore argues that it was entirely justified in using Cirone during his regular tour rather than calling Claimant to perform overtime service. Carrier maintains that the clear intent of Rule 58 is to allow it to utilize an employee already on duty rather than call in an employee specifically to work overtime.

Finally, Carrier argues that the claim, if found to be valid, is nonetheless excessive, since the work in question was performed at the straight time rate. Carrier argues that there is therefore no basis for the punitive rate request, particularly since the Organization has failed to point to any Agreement provision mandating such payment.

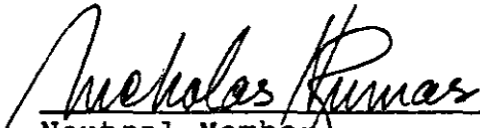
After a review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed, as per its burden, to establish that Claimant was entitled to the compensation requested. The rules cited by the Organization, namely Rules 55 and 56, fail to establish Claimant's entitlement to perform service on the date in question. Rule 56 only prohibits Carrier from requiring an employee to suspend work "after starting any daily assigned working period..." This is not a case where Carrier forced Claimant to leave his position and assume duties on another position in order to prevent work on that position from being performed on an overtime basis. Claimant had completed his regular assignment, and it is undisputed that Cirone was qualified to operate the burro crane. It is further undisputed that Cirone worked on a straight time basis, and that in fact no overtime was performed. Therefore, we find that Rule 55 and Rule 56 do not support the claim, since Claimant cannot claim a

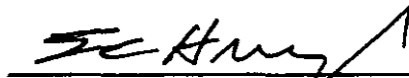
preference for overtime work that was never performed. Finally, we find that Carrier may utilize a qualified employee on his regular shift under Rule 58 without penalty. The burro crane position was admittedly within the "range of his ability" as required by Rule 58. We find nothing in that rule that would prohibit the assignment complained of in this case. In sum, since neither person involved in this case was required to suspend service to absorb overtime or performed overtime in any respect, we cannot find that Claimant was entitled to perform the work in question pursuant to Rules 55 and 56.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

DATE: 8-26-86