

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 21

Case No. 21

System Docket No. BMW-TC-166

STATEMENT OF CLAIM

Claim in favor of H. Jorge, SS #027-42-9012, for seven (7) hours' double time pay because of denial of opportunity to work overtime.

FINDINGS

Involved in this dispute is whether or not the Carrier has the right to relieve an employee after working 16 consecutive hours by assigning another qualified, available employee. In this instance, the Claimant was a Foreman (Flagman) assigned to flagging duty for a period of 16 hours. He was relieved by another employee, who worked for an additional seven hours on the assignment.

Rule H, OVERTIME, reads in pertinent part as follows:

1. Time worked preceding or following and continuous with the employee's assignment or regular eight-hour work periods shall be computed on an actual minute basis and paid for at the time and one-half rate,

with double time on an actual minute basis after sixteen (16) hours of work in any twenty-four hour period (computed from the starting time of the employee's regular shift), except that overtime shall automatically cease and the pro rata rate shall apply at the starting time of the employee's next regular assignment work period. . . .

4. When necessary to work employees under this Rule the senior available qualified employees will be called according to the following:

a. Preference to overtime work on a regular work day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned to that work. . . .

There is no doubt that this Rule contemplates the situation under which any employee works in excess of 16 consecutive hours. The parties acknowledge that this is the case, whether by necessity in emergency or unavailability of a replacement or by choice. The Board finds reasonable, however, the Carrier's assertion that an employee's fitness for duty may well become impaired after such an extended period of duty. The purpose of relieving an employee cannot be said to be the avoidance of overtime work so much as it is the assurance of safe and efficient operation. While Rule ~~16~~ does provide for double-time payment after 16 hours, it does not thereby assert an employee's right to such work.

The Board finds Third Division Award No. 24707 (Scheinman) consonant with this view. That Award stated as follows:

First, Rule 16(a) [providing for double-time pay after 16 hours] does not require that senior employees must be given positions if they have worked sixteen hours in a single day. Instead, it provides that if employees work more than sixteen hours, they are to be paid double time for such work. Thus, Rule 16(a) does not mandate that the position in question be given to Claimant.

Second, under the facts of this case, Carrier could reasonably conclude that Claimant would not be sufficiently rested to perform adequately as an instructor with an inexperienced employee. Thus, Carrier could deny the position in question to Claimant account of his not being "sufficiently fit" to perform this assignment.

A W A R D

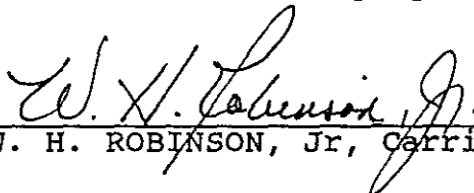
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 9-21-93