NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5732

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)
	) Case No. 1
and	)
	) Award No. 2
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY	)
	)

Martin H. Malin, Chairman & Neutral Member
Donald D. Bartholmay, Employee Member
John H. Young, Carrier Member

Hearing Date: April 27, 1995

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

2. The Carrier further violated the Agreement when it assigned a junior furloughed employe instead of regularly assigned employe P. McKune to perform overtime service continuous with his shift on Wednesday, March 23, 1994 (Claim No. 17-94).

4. As a consequence of the violation referred to in Part (2) above, Mr. P. McKune shall be allowed eight (8) hours' pay at his respective time and one-half rate.

FINDINGS:

Public Law Board No. 5732, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimant is a track foreman whose regular shift was Monday through Friday. On March 23, 1994, a Wednesday, Claimant worked his regular shift, performing snow removal. At the end of his regular tour of duty, Claimant was released from duty for the day. One hour later, Carrier called a furloughed junior employee to perform snow removal work.

The Organization contends that Carrier violated Rule 20(b) by assigning the snow removal work to the furloughed

employee on a straight-time basis instead of giving it to Claimant as overtime. The Organization relies on Third Division Award No. 30156. Although Award No. 30156 applied Rule 20(a), the Organization contends that its logic dictates that Claimant, as the senior qualified available employee, should have been assigned the snow removal work on an overtime basis.

Carrier urges this Board not to follow Award 30156. Carrier further contends that Award No. 30156 does not apply to this claim. In Carrier's view, a critical factor in Award No. 30156 was the fact that the work was continuous with the claimant's shift. Consequently, the award read the language of Rule 20(a) as requiring that the claimant perform the work as overtime. However, Carrier argues, the language of Rule 20(b) is different. According to Carrier, the work in the instant claim was unassigned and would not become overtime subject to Rule 20(b) unless and until Carrier assigned it as such.

In Award No. 1, we declined Carrier's invitation to refuse to follow Third Division Award No. 30156. The instant claim requires us to decide whether to extend Award No. 30156 to Rule 20(b). After careful consideration, we have concluded that Award No. 30156 should be confined to Rule 20(a).

Award No. 30156 focused on the specific language of Rule 20(a). Rule 20(b), which is at issue in the instant claim, provides:

> All other overtime will be given to the senior qualified employee working in the classification at the headquarters point where the overtime is to be performed. At the Duluth Ore Docks, the ore docks and the storage facility will be considered separate headquarters points.

In Claim No. 1 and in Award No. 30156, the work had been assigned to the regularly scheduled employees. When their shifts ended, the work continued. Carrier, however, required those employees to quit work and called in junior furloughed employees to pick up their assignments. Rule 20(a), as interpreted in Award No, 30156, required Carrier to leave the assigned work with the regular employee for that particular job. Since there was no second shift, and therefore no regular employee available to perform the work on a straight-time basis, under Rule 20(a) the work was "overtime required continuous with [the claimants'] shift" which Carrier was obliged to give to the claimants.

In the instant claim, Claimant was released from duty for the day at the end of his shift and no additional work

was performed. An hour later the need for additional snow removal arose. At that point, the work was unassigned.

The record developed on the property merely indicates that the work performed was snow removal. Nothing in the record linked the work to the specific task that Claimant was performing during his regular shift. Furthermore, there is nothing in the record to suggest that Carrier manipulated the assignment to avoid coming under Rule 20(a). Our decision in this matter should not be read to indicate any view as to how, if at all, such evidence might affect the result. We leave that issue for resolution if it should arise in the future.

Thus, the issue is whether Rule 20(b) required that the unassigned snow removal work be given to Claimant at overtime. Unlike Rule 20(a) which can be interpreted as governing work assigned to a particular job continuous with a particular employee's shift, Rule 20(b), on its face, says nothing about how unassigned work is to be assigned. It merely states that if Carrier assigns it as overtime, it must be given to the senior qualified available employee working in the classification at the headquarters point where the work is to be performed.

In the absence of language expressly requiring Carrier to assign work as overtime, Carrier has the discretion, with respect to unassigned work, to assign it to employees available to work straight time, as long as it does so within the limits of the agreement. As stated in Second Division Award No. 4670 (quoting Third Division Award No. 4969):

> An employe has no right to perform overtime work as such except where the Agreement so provides. When necessary work can be performed only in overtime hours, the senior available employe then has a valid claim to it by virtue of his seniority. But where the Carrier can get the work done at straight time rates without violating the Agreement it is within its province to do so. It is the function of management to arrange the work within the limitations of the collective agreement, in the interests of efficiency and economy.

No provision of the Agreement has been cited which required Carrier to assign the unassigned work at issue as overtime. Therefore, Rule 20(b) which specifies which employee should be assigned the overtime never became applicable. Accordingly, we find that Carrier did not violate the Agreement when it called in a furloughed junior employee instead of giving the work to Claimant.

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AWARD

Claim denied.

Martin H. Malin, Chairman

John H. Young,
Carrier Member

Donald D. Bartholmay,
Employee Member

Dated at Chicago, Illinois, August 21, 1995.