

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(CSX Transportation, Inc. (the Chesapeake and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Carmen Glen Medcalf, Hobart Pack and L. L. McLeod (hereinafter referred to as "claimants") and the provisions of Rule 11 of the Controlling Agreement when on June 13, 1988 the carrier ignored the overtime board in violation of the aforementioned Agreement Rule.

2. Accordingly, the claimants are entitled to be compensated for four (4) and one-half (1/2) hours at the applicable Carman Welders rate of time and one-half for said violation.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This Claim alleges that on June 13, 1988, three employees were requested to and did perform four and one-half hours' overtime work. The Organization contends the three Claimants "were the next available employee[s] to be called out on the overtime board" and should have been the employees asked to work.

In his appeal response, the Director, Labor Relations stated:

"Rule 11 states there will be as 'near as possible' an equal distribution of overtime; it does not require that the overtime opportunity for all employes be the

same at all times. Therefore, Claimants herein will have the opportunity to equalize any overtime allegedly lost, if such has not already been done."

There is no evidence to show that such "opportunity" was not granted.

This Claim is similar to that reviewed in Second Division Award 12291, involving the same parties and the same location. Therein, the Board examined the significance both of an established overtime call list or call board and the appropriate remedy (prompt opportunity for make-up work) to assure "equal distribution" of overtime. This reasoning is incorporated here by reference.

Second Division Award 5136 is of relevance here. That Award stated:

"While the fact that Claimant was first out at the time the disputed work was given [another employee] may be some evidence of favoritism, it is not sufficient in and of itself to substantiate a contention of unfair discrimination. The burden of proof in that regard rests with Petitioner and the record does not establish that over a reasonable period of time, Claimant has not received a fair share of overtime, including daytime work."


In this instance, the Carrier acknowledged the assertion made by the Organization and directed an appropriate remedy. The Claim for a monetary remedy is therefore inappropriate here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1992.