

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Referee Robert E. Peterson

Award Number 3969  
Docket Number 3868

PARTIES TO DISPUTE: Allied Services Division/ Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, AFL-CIO  
Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-80) that:

1. Carrier violated Rules 1, 28, and others of the current schedule agreement when it required, requested or allowed employes not covered by the agreement to perform patrolmen duties in order to avoid paying overtime on February 16, 17, and 18, 1979.
2. Carrier shall now be required to pay the following claimants at the punitive rate of their positions for the hours noted:

J. E. Truitt	3 hours	Feb. 16, 1979
R. G. Todd	2 hours	Feb. 16, 1979
R. C. Twigg	4 hours	Feb. 17, 1979
R. G. Todd	2 hours	Feb. 17, 1979
J. D. Dugger	2 hours	Feb. 18, 1979

OPINION OF BOARD: It is the contention of the Organization in the dispute before us that employees it represents were denied overtime because Carrier elected to use employees outside the scope of their Agreement to perform duties of patrolmen.

Basically, it is the position of the Organization that Carrier violated not only the collective bargaining agreement, but also past practice on the property when it did not allow patrolmen to relieve one another at the site of a derailment. In this regard, it submits the historic and customary method utilized on the property is for one patrolman to relieve another at the work site in situations such as derailments. It is the Organization's further position that if Carrier had only one company automobile available then Claimants' relief should have been authorized to use their personal vehicles as it was, in any event, Carrier's obligation to get the relief to the work site in a matter so as not to violate the rights of each Claimant.

Carrier denies that its supervisory officers performed the duties of patrolmen at the derailment site. It contends the scheduling of the patrolmen to work in the manner they did was necessiated by the limited availability of its vehicles and that resultant schedules provides "there were occasions when no Patrolman was on duty at North Vernon, Indiana; and, conversely, there were occasions when a Patrolman was on duty at North Vernon and no non-contract employee at the location." It says its decision requiring patrolmen to proceed by company vehicle from the derailment site to Cincinnati prior to the close of their tours of duty was so that the officers relieving them could utilize the company vehicle to return to the North Vernon scene of the derailment. It is the Carrier's further position in this regard that although the applicable rule (Rule 45(e)) permits the use of personal vehicles "if authorized by the company," that this is a new allegation not presented on the property during the handling of the claim and is, therefore, improperly before the Board for consideration.

It is also the Carrier's position that the Organization's allegations concerning past practice being in support of their position is nothing more than "a self-serving statement" for which the Organization has provided no documentary evidence to support same. It says it cannot agree with the Organization's position that past practice on the property allowed patrolmen to relieve one another at the site of a derailment.

It is evident from examination of the record that Carrier rightly argues the Organization fails to offer "documentary evidence" concerning the existence of the claimed practice related to work site relief as well as a listing of those job functions of patrolmen which it alleges were performed by the Carrier's supervisory officers. Certainly, the mere assertion of a position absent substantive probative evidence may not be said to support the violation of an agreement or established practice.

The record being barren of requisite evidence to support the claim, it must be denied, for the Board does not have the obligation to speculate as to what duties may or may not have been performed at the derailment site by the patrolmen or their senior officers in the absence of the patrolmen. The burden of proof of a specific violation of the agreement must be made by the petitioner; not be speculation or mere assertion, but by conclusive evidence.

FINDINGS:

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

The Carrier and the Employes involved in this dispute are respectively Carrier and Employe 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.

The parties to said dispute were given due notice of hearing thereon.


The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

  
Nancy J. Dever  
Acting Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1983.