

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 4310
Docket Number 4340

Referee Ronald L. Miller

PARTIES Allied Services Division/Brotherhood of Railway, Airline and Steamship
TO Clerks, Freight Handlers, Express and Station Employees

DISPUTE: Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-173) that:

1. The Carrier violated Rules 29, 30, and 36 and others of the Agreement, when on November 26, 1978 it allowed and permitted Patrolman Towman, regularly assigned to Saginaw, Michigan to absorb overtime work of Patrolman W. Goodfellow regularly assigned to Flint, Michigan.
2. The Carrier violated Rule 24 of the Agreement when it failed to timely deny the claim appealed on behalf of Patrolman Goodfellow.
3. The Carrier shall now be required to pay Patrolman Goodfellow eight (8) hours pay at time and one-half rates for November 26, 1978, account these violations.

OPINION OF BOARD: As a threshold issue, the Organization contends that the Carrier failed to timely deny Patrolman W. Goodfellow's claim. Therefore, according to the Organization, the claim is payable on default.

As to the merits of the case, on Sunday, November 26, 1978, the Carrier assigned Patrolman B. Towman (Seniority District No. 1, with headquarters in Saginaw, Michigan) to perform certain duties at the Maple Road facility, Flint, Michigan during his regularly scheduled hours of work (11:15 p.m. to 7:15 a.m.). The Organization contends that the assignment of Patrolman Towman was improper because it absorbed overtime work that was a preferential right of Patrolman Goodfellow (Seniority District No. 1, with headquarters at Flint, Michigan, regularly scheduled hours of work 3:15 p.m. to 11:15 p.m.). The Carrier contends that it notified the Organization within the designated sixty (60) day period. The Carrier contends that the assignment of Patrolman Towman to work at the Maple Road facility did not absorb overtime because the location is within Patrolman Towman's Seniority District and the work took place during his regular hours of work.

Concerning threshold issues, the Organization and the Carrier are entitled to have cases decided on their merits unless it is clear that one of the parties has not complied with a provision of the Agreement. In this case, the Organization and the Carrier have cited numerous awards in support of their different interpretations of the word "notify" (Rule 24 - Time Limits). We conclude from these awards and from arguments presented in this case that the common and ordinary meaning of the word "notify" denotes delivery to and receipt by the party to be notified. Therefore, a claim is "filed" with the Carrier when it is received by the Carrier and the Claimant is "notified" by the Carrier when the disallowance is received by the Claimant.

In this case, the claim was received by the Carrier on June 8, 1979. The Carrier had sixty (60) days thereafter to respond. The Organization admits that it does not know the date of receipt of the disallowance, but argues that at least two days in transit is a reasonable assumption. The right to have a case decided on its merits should not be denied based upon speculation, even though that speculation is reasonable. Therefore, the claim is not payable on the basis of a default.

As to the merits, the Organization's claim is not supported by substantial evidence. The Organization has not shown that the Carrier violated Rules 29, 30 or 36. Patrolman Towman was not required to suspend his regularly assigned duties in order to absorb overtime. The duties he performed at the Flint facility are regularly a part of his position and those duties were carried out within his regularly scheduled hours of work. Patrolman Towman began and ended his tour of duty in Saginaw, Michigan. Both Saginaw and Flint are located in Seniority District No. 1. The Organization did not convincingly rebut the Carrier's contention that "...on this property patrolmen have always been utilized to perform service throughout their entire seniority district". Rules 29 and 30 do not require the Carrier to use Patrolman Goodfellow on overtime when Patrolman Towman was available to perform the work as part of his regular duties.

FINDINGS:

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

The Carrier and the Employees involved in this dispute are respectively Carrier and Employee 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. Oester
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August, 1985