Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 5078
Docket No. 5065
01-4-00-4-9

The Fourth Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization that:

1. Carrier violated the TCU Ore Dock Employees Agreement at the Ore Docks in Two Harbors on Friday, March 27, 1998, when it required and/or permitted Mr. Dan R. Carr to work the 3:30 p.m. shift on overtime as a Control Operator.

2. Carrier shall now be required to compensate R. M. Johnson eight (8) hours pay at punitive rate of the Control Operator position for Friday, March 27, 1998 which he would have received had he been properly called to work this position."

FINDINGS:

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

The carrier or carriers and the employee or 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.

Parties to said dispute were given due notice of hearing thereon.

The Carrier maintains a facility at Duluth, Minnesota, where iron ore is received in railroad cars, unloaded and subsequently, loaded in to ships for further shipment to steel plants located along the lower Great Lakes. On Friday, March 27, 1998, it experienced a need for overtime on a Control Operator position with a starting time of 3:30 P.M. and called D. R. Carr to fill it. The Organization filed a timely claim on April 3, 1998 asserting that Rule 22 of the Agreement required it to call senior Control Operator R. M. Johnson in lieu of Carr. After handling in the usual fashion on the property, including an appeal to the Carrier's highest designated officer the claim remained unresolved and was submitted to the Board for final and binding resolution.

The Organization points to Rule 22 (3) c. of the governing Agreement in support of the claim:

"Rule 22 – ASSIGNMENT OF OVERTIME

3. When it is known that overtime is required for a full shift employees will be called in the following manner:

* * *

a. The senior regularly assigned employees on that particular shift, and classification who are off on days of rest (including both Ports.)

b. When the means in item a. have been exhausted, then calls will be made to the senior regularly assigned employees on any shift but in same classification who are off on days of rest (including both Ports).

c. When the means in items a. and b. have been exhausted, then calls will be made to the senior regularly assigned employees in the same classification being doubled from the preceding shift."

There is little disagreement on the facts out of which this claim arises. Both the Claimant and Carr held day shift positions with hours of 7:30 A.M. to 3:30 P.M. The Claimant worked Monday through Friday and Carr worked Thursday through Monday. The Claimant had attended a training class and Carr had worked the shift immediately preceding that on which overtime was needed on Friday, March 27, 1998. Both parties

agree that Rule 22(3)a. and Rule 22(3) b. had been exhausted and that the next employee in line for the overtime opportunity pursuant to Rule 22(3)c. should have been the most "senior regularly assigned employee in the same classification being doubled from the preceding shift." That was the Claimant.

The Carrier, however, called Carr to work, reasoning that because the Claimant had attended a training class and had not normally worked overtime in the past it was fair to conclude that he was unavailable or unwilling. It argues that he had declined 65 prior calls - and two more on the days immediately following the claim date - and, therefore, should not now be heard to claim lost time when in reality he lost no time.

The Carrier cites a number of cases, including First Division Awards 19929, 24036 and 25041, as well as Third Division Awards 32510 and 33512 for the age-old contract interpretation principle suggesting that whenever alternative interpretations of contract language are possible, the decision-maker should prefer the more reasonable construction and avoid absurd results.[1]

The Awards the Carrier points to demonstrate thoughtful analysis of fact patterns and contract language having little in common with this case. First Division Award 19929, for example, considered a "technical" violation of complex BLE Rules by which one crew trespassed by a matter of feet into another seniority district in the process of tying up their engine after yarding their train. Construing the governing Rule as arguably aimed at broader incursions, and finding no injury or loss incurred by any employee, the Board rejected the claim. In Third Division Award 32510 the transfer of a signal gang from their home seniority district to another was held to be of a type previously acquiesced to and the claim was dismissed. In Third Division Award 33512 the Board merely found the Carrier's rearrangement of shift assignments to fall within its contractual rights to arrange its forces and manage its business in accordance with operational needs. None of the cases relied upon is parallel or analogous to that under consideration here.

The language at the heart of this dispute is very clear. It does not present any issue of selecting the sensible alternative interpretation of ambiguous language over the

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First Division Award 24036, a short dismissal, appears to be miscited. First Division Award 25041 was not appended to the record.

absurd. When contract terms are clear, they are entitled to enforcement without resort to further inquiry. From the Carrier's standpoint, obviously, it is a cruel wrinkle that an employee unaccustomed to working overtime should now benefit from its entirely reasonable bypass. In this context, however, the equities are for the parties to arrange, through local agreement or otherwise. In the meantime, Rule 22 (3) c. manifests their clear mutual intent, commands the Carrier to offer overtime to the senior employee over the junior employee, and must be honored.

For the record, arguments advanced by the Carrier for the first time in its Submission were not considered.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Dated at Chicago, Illinois, this 24th day of July, 2001.