

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

With Referee Robert E. Peterson

Award 23669

Docket 40996

PARTIES (United Transportation Union (successor to Brotherhood of Locomotive
TO (Firemen and Enginemen)
DISPUTE (
(Lake Superior Terminal and Transfer Railway Company

STATEMENT "Claim of C. J. Somers, assigned as engineer to a 7 AM yard
OF CLAIM: assignment on April 25, 1964, for one day's pay at engineers' rate
on account of not being allowed to work his assignment."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon
the whole record and all the evidence, finds that the parties herein
are carrier and employe within the meaning of the Railway Labor Act, as amended,
and that this Division has jurisdiction.

Hearing was waived.

The Board is not persuaded by Petitioner's assertions that account Carrier
having worked Claimant's overtime to the extent such time on duty made them
ineligible for work on their assignments the following day under application of
the Hours of Service Law, that Claimants are thus entitled to a day's pay.
Certainly, as Carrier submits, this Board has held in the past that being
eligible for service under the Hours of Service Law is a prerequisite to an
employee's being permitted to perform service for which they would otherwise
stand.

The above notwithstanding, the Board also notes Claimants had opportunity to
work on the date of the claim under application of various rules of the
agreement other than those which they wrongfully maintained supported their
claim, but chose not to exercise rights to such work opportunities which the
governing rules made available to them.


The claim is without agreement support and, accordingly, is denied.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

DATED AT CHICAGO, ILLINOIS,
THIS 14TH DAY OF SEPTEMBER 1984.

ATTEST:



Nancy J. Deyer
Executive Secretary