

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORP.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it failed to call and permit Trackman Alfred Buckland to perform overtime services on February 18, 19 and 20, 1958.

(2) Trackman Alfred Buckland now be allowed a wage adjustment to provide him with pay for the same number of hours and at the same rate as he would have received had he been called and permitted to perform the overtime services referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Alfred Buckland and Lynn Shelters have established and hold seniority as Trackmen as of September 25, 1922 and August 9, 1926, respectively. Both were regularly assigned as such on the section headquartered at South Junction.

During overtime hours on February 18, 19 and 20, 1958, the Carrier called and used Trackman Shelters to accompany the snow removal equipment operated by Bulldozer Operator Leo St. Louis in the performance of snow removal work. The work performed by Mr. Shelters consisted of removing snow from switches and acting as a lookout for obstructions impeding the progress of the snow removal equipment.

On the dates in question, Mr. Shelters worked a total of twenty-four and one-half (24½) hours and was paid therefore at the time and one-half rate of pay.

The claimant was available, ready and willing to perform the overtime service performed by the junior Trackman, but was not called or notified to do so.

Consequently, the instant claim was filed in behalf of the claimant because of this improper work assignment.

In conclusion, without waiving its position that this claim is completely without merit and should be denied in its entirety, carrier asserts that should claim be sustained, claimant should receive no more than pro rata pay for 16 hours, based on the principles enunciated in Award 5978 and awards listed therein that the penalty for time not worked should be no more than pro rata pay.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

OPINION OF BOARD: Here, a claim is made by a senior trackman who was not called to perform overtime work, assisting an operator of a snow plow. A junior trackman was assigned the overtime work.

It was the Claimant's contention that he was the senior trackman and should have been assigned the work according to the terms of the current Agreement Rule 1(a), (b), Rule 2 and Rule 3(b).

The Carrier contended that under Rule 2 of the current agreement a necessary qualification of the position was the ability to do the work which the Claimant lacked.

Two questions are presented here:

Did the Carrier violate the Agreement by assigning a junior employe to the work of an assistant to the operator of a snow plow?

Is the Claimant entitled to a wage allowance for the same number of hours and rate he would have received had he been called to perform the work?

The snow plow was a single man operation and an operator was provided other than the senior and junior employes noted herein. The Carrier notes that the junior man was an assigned assistant snow equipment operator. The Agreement between the parties, although listing many job classifications, does not list such a classification. Furthermore, an assigned snow plow operator in fact did operate the snow plow. Any work performed by an assistant would be work performed by trackmen. Thus, we are of the opinion that the junior man was an assigned trackman.

The record does not dispute the fact that the Claimant was the senior trackman with approximately 36 years of service. The record further discloses that the work was of such a nature as to require little, if any, previous experience not possessed by the Claimant. The machine was to be sole operated and such operator was assigned to do that job.

This Board has held many times that when work is given such should be given on a seniority basis if ability and merit are sufficient. Here the Claimant possessed all the qualifications necessary to perform the work involved.

The Claimant senior trackman should be entitled to pay for the same number of hours in excess of eight hours as was allowed to the junior trackman for those hours he was regularly assigned.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.