

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19469
Docket Number CL-19344

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Monon Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6978)
that:

A. The Carrier violated terms of the current Working Agreement when it declined to permit Mr. W. L. Collins work the position of his choice which had been assigned to him under the rules agreement;

B. Mr. Collins should be paid for all compensation lost as a result of the Carrier's violation of his rights under the rules of the agreement; commencing March 3, 1969, as set forth in attachment "A";

C. And this claim shall be a continuing one until the violation is corrected.

OPINION OF BOARD: Claimant, W. L. Collins, holds one of three Truck Driver - Equipment Operator positions working out of Carrier's Lafayette, Indiana storehouse. All three positions carry the same rate of pay and work the same assigned hours. Claimant has a seniority date of March 28, 1947. On the dates in claim an employee junior to him, H. T. Stinnett, with a seniority date of September 3, 1957, an occupant of one of the other Truck Driver - Equipment Operator positions, performed overtime work which Claimant alleges should have been assigned to him by virtue of his superior seniority. Rules 46 (g) and (h) of the Agreement control in assigning overtime in the instant case:

"(g) Except where it is otherwise agreed between the Management and General or Local Chairman in working overtime before or after assigned hours or on call under Rule 47, employees regularly assigned to the positions on which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays. (Added effective January 16, 1956)."

"(h) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employees in the office or at the facility where the overtime service is to be performed will be given preference to such overtime in accordance with seniority, fitness and ability. (Added effective January 16, 1956)."

Inasmuch as the overtime work to be performed on the dates claimed could not be identified specifically to one of the three Truck Driver - Equipment Operator positions, Claimant would be entitled to the overtime made by the junior employe under the provisions of Rule 46(h) if he had the fitness and ability to perform the work requiring overtime, as is clearly indicated by the language of the Rule, particularly the last phrase, "fitness and ability". The record shows that the Carrier had, with reason, some doubts as to Claimant's "fitness and ability". Their doubts were timely made and substantiated in the record. Claimant has not come forward with any proof to the contrary, and has not denied the allegations raised by Carrier concerning his fitness and ability. Under the particular circumstances in this case, the Board is of the opinion that Carrier's handling of the matter was without prejudice, and that since the Claimant has not come forward with proof to the contrary, and, as a matter of fact, they have not even alleged that Claimant had the necessary fitness and ability, the Claim must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

Claim dismissed in accordance with Opinion.

A W A R D

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. L. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.