

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22771  
Docket Number w-22228

Rolf Valtin, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(The Denver and Rio **Grande** Western Railroad Company

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

(1) The Agreement was violated when it used an **employee**  
junior to Extra Gang Laborer Art Bogard for **7-1/2** hours of **overtime**  
service on August 19, 1976 (System File **D-11-76/MW-14-76**).

(2) **Claimant** Bogard shall now be allowed **7-1/2** hours' pay  
at his time and one-half rate."

OPINION OF BOARD: This case is concerned with an **overtime assignment**  
for one employee from among a group of **employees**  
who were members of a particular extra gang -- Extra Gang 6501.  
The assignment covered the **period** from **4:30** PM to midnight on  
August 19, 1976. Both the claimant and the employee selected for the  
assignment were members of the Extra Gang. The claimant's seniority  
dates from **May** 16, 1973. The selectee's seniority dates from June 24,  
1975. To be determined is whether the claimant's non-selection for  
the assignment violated his seniority rights.

**Had** the assignment involved the performance of one **or**  
another piece of the **Gang's** regular work, we would unhesitatingly  
uphold the Organization. For, despite all that the Carrier here seeks  
to argue, prior Awards **involving** these two parties have settled the  
question of whether the Carrier is bound to the application of seniority  
**in** assigning a particular gang's **overtime** work to some **members** of  
that gang. It suffices to quote one paragraph from Award 22324  
(which was not in the parties' hands when the instant dispute arose  
and was being processed by the parties but which had been issued by  
the time it was under Board consideration):

"The question of whether seniority is to govern **in the**  
assignment of overtime work has been decided in three  
recent Awards of this Division involving the **same** parties,

- "the same agreement, and a similar issue. Consistent with the findings **in** these Awards (Nos. 21421, 21545, **and 21757**), it is the opinion of this Board that once Carrier decided to use **B & B** carpenters assigned to **B & B** Gang No. 6021 to perform overtime **service**, Carrier was required to assign said **overtime** to Carpenters in Gang No. 6021 on the basis of their seniority. Said Board findings in the cases listed **supra** were based upon a violation of the Parties' **Agreement Rule 4**."

We add, again contrary to **arguments** advanced by the Carrier, that we would not be deterred from a ruling in favor of the claimant by the fact that Extra Gang 6501 at the time included three employees who were senior to the claimant (and thus, obviously, were senior to the selectee). The answer would be that the failure by these employees to claim the particular piece of work -- which failure is left unexplained and is potentially attributable to all sorts of reasons -- cannot be accepted as grounds for defeating the claimant's claim for that piece of work,

In the present case, however, the assignment was not **one** involving the performance of the Gang's regular work. What happened, rather, was that the **Gang's** supervisor decided that the work-train equipment should be protected **in** the ensuing off-duty hours against vandalism and theft. The assignment, in short, was a watchman **assignment**. And in that circumstance, we think that some leeway for suitability -- some room for allowing suitability to **override** seniority -- should be granted.

We are so proceeding **and** we view the evidence as justifying the non-selection of the claimant. In contrast to what was true of the **employee** who was selected for the **assignment**, the claimant:

- 1) was not familiar with the operation of the message-transmitting **equipment** which was to be used **in** the event difficulties arose;
- 2) had not passed a motor-car examination (and, though true that the motor car was not used on the night in question, its potential operation was legitimately seen as a requirement for the **watchman** assignment);
- 3) had worked such an extraordinarily large number of hours in the immediately preceding period as to legitimately make him **viewable** as a poor risk in the light of the nature of the

**assignment** -- he had worked 25 consecutive hours, been off for 8 hours, and then worked the 8 hours which preceded the hours for the watchman stint.

We are denying the claim on the narrow basis of the facts and circumstances presented by the case.

➤ **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 **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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

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