

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23101  
Docket Number **CL-22362**

James F. Searce, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(a-8532) that:

1) Carrier violated the seniority and overtime provisions of the effective Clerical Agreement when it assigned a junior **employee** to Claimant, Janice Daniel, to the **performance** of overtime on August 31, September 2, September 11, and September 25, **1976**, in ~~the~~ Revenue Accounting Department in the General Office.

2) Claimant, Janice **Daniels**, shall now be compensated at ~~the~~ rate of time and one-half at the penalty rate of **\$9.97** per hour for 2 hours on August 31, **1976**, 2 hours on September 2, **1976**, **6-3/4** hours on September 11, **1976**, and 8 hours on September 25, **1976**, for a total of **18-3/4** hours and total compensation of \$186.94.

OPINION OF BOARD: In effectuating the **terms** of the collective bargaining agreement ("Agreement"), the parties established "Seniority Districts," within which seniority rosters were prepared to permit employees listed thereupon to exercise their rights as agreed **upon** by the parties and set out elsewhere under the Agreement. One such **District** (Number 2) contained represented employees in the Revenue Accounting, ~~Data~~ Entry and Car Information offices.

On the dates of August 31 and September 2, 11 and **25, 1976** over-time was required to be worked on a position in Data Entry. For reasons not germane to this case, the incumbent of that position was unavailable to perform any such overtime assignments, two of which were immediately past the Clerk's regularly assigned shifts and two on her regularly **scheduled** days off. Such assignments were made to a Clerk assigned to the Revenue Accounting office who apparently possessed the necessary skills to **perform** the work involved. The Claimant herein occupied a Clerk's position (~~Customer~~ Accounting Correction and Control), also in the Revenue Accounting office, and possessed a higher position on the seniority roster in District 2 than did the Clerk to whom such work was assigned. There is no dispute that the Claimant also possessed the skills necessary to perform the work in the Data Entry office.

According to the Organization the Carrier was required to assign such work to the **Claimant**, given her skills to **perform** such **work** and her superior standing on the seniority roster **vis** a **v-is** the Clerk to whom such work was assigned. It cites Rule 3 - Seniority Datum, (e) for **authority** in this regard:

"Seniority rights of employees to **vacancies**, new positions, extra work, or to **perform** work covered by this agreement shall be governed by these rules."

The Carrier rejects such claim, contending that neither Rule 3(e) nor any other in the Agreement restricts its right to make such assignment.

**Notwithstanding** the Organization's contention that Rule **3(e)** **constitutes** a general rule establishing seniority as the condition upon which overtime opportunities are to be offered -- as opposed to (or in the absence of) a specific rule setting out some other order in that regard, we are unable to conclude that this provision has such **significance**. Neither its construction nor placement in the Agreement **supports** the Organization's contention. Instead of setting out how seniority rights are to be applied, 3(e) establishes that such **rights are** to be "governed by these rules," which could be construed restrictively to paragraphs (a) through (d) of **Rule** 3, or broadly to the other Rules in the Agreement. Granting its application to the entire Agreement, no **Rule** has been cited that acts to deny the **Carrier** the right to assign overtime as it **did in** this case. Reference was made to Rule 49 - Overtime (f), but the **requirements** of this provision were met by the **Carrier's** offer in the first instance of such overtime opportunities to the incumbent of the position which such overtime was worked:

"Except as provided by paragraph (e) above and when it is practicable and will not interfere with the operation the employee whose regular duties are to be performed on call or overtime shall have preference to such work."

(Paragraph (e) as cited in this provision is not applicable and thus not reproduced here.) Considering the Agreement generally, we note that Rule **7 - Exercise** of Seniority - also sets forth the terms by which seniority rights are applied:

"Seniority rights of employees covered by these rules **may** be exercised only in case of vacancies, new positions, or reduction of forces, except as otherwise provided in this agreement . . . ."

There has been no showing that other Provisions Of the Agreement reserve overtime on the basis of seniority under the circumstances prevalent in this case.

While it may be galling to employees not to be offered overtime opportunities where, as here, they are qualified, more senior and **apparently** proximally located to where such overtime work is to be **performed**, we cannot ascribe more status **to** such seniority rights than are the result of negotiations between the Parties. **In sum, we** do not **find** Rule 3(e) to be a provision which reserves rights to employees in the **Claimant's** status under the circumstances **existent** in this 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 **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

**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 15th day of December 1980.

LABOR MEMBER'S DISSENT  
TO  
AWARD 23101, DOCKET CL-22362  
(Referee Searce)

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Award 23101 is ridiculous! The parties, since the adoption of their first agreement over sixty years ago, have continuously been governed in the assignment of extra work by a rule similar or identical to Rule 3(e), reading:

"(e) Seniority rights of employees to vacancies, new positions, extra work, or to perform work covered by this agreement shall be governed by these rules." (emphasis added)

On several dates in August and September of 1976 extra work was required by the Carrier. This extra work was not assigned to Claimant, a senior employee to the employee used. Carrier's failure to use Claimant violated the clear and explicit requirements of Rule 3(e).

Referee Searce attempts to justify his decision with rhetoric on contract construction dealing with conflicts between general rules and specific rules. He holds that Rule 3(e) is a general rule. He then finds that there are specific overtime situations dealt with in the agreement by specific rules — his reference to Rules 49 and 7 for instance. He does not however, find that the agreement has a specific rule dealing with the assignment under the facts herein. At this point a judicious person would have held that in the absence of a specific provision modifying the general provision of Rule 3(e) the general provision of Rule 3(e) must apply and the claim must be sustained. Logic would compel no other conclusion.

It is outrageous to write:

"... no Rule has been cited that acts to deny the Carrier the right to assign overtime as It did in this case."

Also, it ~~is~~ Idiotic to write:

"There has been no showing that other provisions of the Agreement reserve overtime on the basis of seniority under the circumstances prevalent in this case."

when it is manifestly clear that Rule 3 requires the general assignment of overtime on the basis of seniority unless some other specific rule provides that certain types of overtime are to be assigned differently. The Referee's remarks make no sense and go contrary to the tenets of contract construction.

The Referee's apologetic dicta In the last paragraph of the Opinion does not overcome the fact that his award is palpably in error and does **violence** to the basic tenets of contract construction. It is fortunate he saw fit to limit his decision to the **circumstances** existing in the single particular case he had before him.

  

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J. C. Fletcher, Labor Member