

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23467
Docket Number MS-23380

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: {United Steelworkers of America, AFL-CIO
{Lake Terminal Railroad Company

STATEMENT OF CLAIM: 'The dispute involves a violation of Rule 19(k) and requests the grievants be paid overtime equal to the amount that was paid to the people who worked the job.'

OPINION OF BOARD: This claim is filed by Grievance man Tim L. Guenther, of the Maintenance of Way Department on behalf of the following employees:

#48	G. Berg	#205	L. Romero
58	L. Rodriguez	135	H. Arroyo
189	Y. Garcia	10	S. Santiago
145	J. Ruiz	219	S. Casarez
212	J. Rodriguez	9	C. Tirado
27	A. Neri	34	J. Lugo
30	W. Marcucci	38	F. Martinez
54	A. Roldan	1332	D. Soto
16	A. Torres	1336	W. Aponte
15	R. Santiago	1338	J. Torres
17	M. Alvarado	1342	J. Laboy
81	J. Rodriguez	1340	T. Guenther
123	A. Arroyo	1358	L. Morales
125	C. Torres	1362	J. Lopez
171	R. Marrero	1364	D. Bring
186	R. Irizarry	1365	E. Gonzales
188	F. Rivera	1369	R. Torres
190	E. Peres	1372	V. Rivera
198	A. Rivera	1374	C. Denney
248	E. Rivera	1375	A. Diaz
250	J. Gonzalez	1382	V. Perez
2%	J. Nieves	1386	R. Sanchez
261	L. Lowstetter	1397	M. Navarro
208	M. Simonovich	1600	B. Narvaez
265	M. Garcia	1601	G. Sanchez
278	M. Beriel	1611	J. Sanchez
1350	A. Herrera	1613	J. Mendoza
1322	E. Rosario	1614	M. Villagomez
1327	H. Maynard	1615	J. Sanchez
1329	M. Ramos	1617	L. Conley

The **Organization** contends that **Carrier** violated Rule 19, (k) of the Agreement when the overtime on the Coke **Plant** Pusher Job was not equally divided among **qualified employees** in the Maintenance of Way Department. This job began approximately **March 1, 1979**, and ended **March 31, 1979**. Instead, Carrier assigned and used two other gangs to perform this work.

Rule 19 (k) states:

"Except in cases of emergency, all overtime in each department will be distributed equally among the employees in that department. ability of employees to do the work to be **considered.**"

Carrier, on the other hand, argues that there was no violation of the Agreement. It **contends** that the parties have an established practice in the **application** of 19 (k) in the Maintenance of Way Department **which** is when the overtime involved is in connection **with work done** in regular hours, the **same employees** will be used to perform the overtime. It further refutes any contractual violation on the basis that 19 (k) does not specify any **time frame within** which overtime should be **equalized** nor any specific application for day-to-day distribution of **overtime**.

After a careful **review** of all the evidence **presented, this Board is** persuaded that on this property, **once** a gang or gangs has **begun** a job, it is **proper** to have the **same employees** complete the job.

Moreover, to accept the Organization's **argument** regarding the equalization of overtime this **Board** would have to create **time limits** for this equalization not specified by Rule 19 (k). This we are neither inclined nor authorized to do. In my case, one **month** is not a reasonable period of **time** to make a **determination** as to whether or not overtime is being equally distributed **among qualified employees**.

The claim, in this **instance, must** therefore be denied.

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.

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Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.