

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23902
Docket Number MW-23383

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company)

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

(1) The Agreement was violated when Section Foreman L. McLean was not used to perform **overtime** service on his assigned Section territory (section 5056) on August 14, 15, 16, 17, 21, 22, 23 and 24, 1978 (System File 37-SCL-77-58/12-27 (79-8) J).

(2) Section Foreman L. McLean be **allowed** forty-three (43) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: In the **Submission** here, the **Claimant** asserted that he was contractually entitled to perform all of the work accruing to his position, and thus he had the right to perform all overtime service on his assigned territory. In addition to defenses **on** the merits, Carrier has reminded us that the Claimant did not cite any contractual basis for the claim while the matter was under review on the property. Thus, pursuant to Award 19975, Carrier argues that the **claim** should be dismissed.

Nonetheless, Claimant asserts that the Carrier itself did not raise the asserted defense in a timely manner.

On the property, the Carrier did state that there was no Agreement guaranteeing the overtime to the Employee. We feel that the deficiency was raised in sufficient terms on the property and thus the **Claim** should 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

That the claim be dismissed.

Award Number 23902
Docket Number MW-23383

Page 2

A W A R D

Claim dismissed.

'NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

BY Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1982.

