

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24931
Docket Number MW-24938

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company (St. Louis-San Francisco)

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

(1) The Agreement was violated when Machine Operator R. G. Denney was not called to perform overtime service on his assigned position (Ballast Regulator Operator - Gang S-2-21) on July 11 and 12, 1981 [System File B-2033/MWC 82-2-4].

(2) Because of the aforesaid violation, Machine Operator R. G. Denney shall be allowed twenty-one (21) hours of pay at his time and one-half rate and a per diem allowance (\$19.13 per day) for July 11 and 12, 1981.

OPINION OF BOARD: Claimant R. G. Denney at the time of the instant dispute worked in the position of a ballast regulator operator assigned work on Monday through Friday with weekends as rest days. The Organization contends that the Carrier violated the Claimant's rights and most specifically Rule 62(m) which reads as follows:

"Rule 62. Work Week

(m) Work on Unassigned Days - Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

In the case at bar, the Organization claims that Machine Operator R. G. Denney, the Claimant, who regularly operated the ballast regulator through the week was not called as required under Rule 62(m) to operate said equipment when Carrier scheduled routine maintenance on Saturday, July 11 and Sunday, July 12, 1981. Organization further claims that the Carrier utilized an employee who was neither "an available extra or unassigned employee" and in so doing denied Claimant, the "regular employee" under Rule 62(m), his rights. The Board notes that there is little agreement between the Organization and Carrier as to the above interpretation and further disagreement between the parties as to whether Carrier attempted to call Denney on Friday, July 10th for weekend work. The Organization presented evidence that Denney was not called and the Carrier, evidence that he was called.

A careful and thorough review of the record indicates that Claimant was the regular employe as envisioned by Rule 62(m) and that said Rule 62(m) is the controlling rule in force for the determination of work on unassigned days. It is the determination of this Board that the Claimant was the employe who regularly did such ballast regulator work for the assigned week and therefore the controlling agreement provided for the Claimant's right to perform such work on the days of Saturday, July 11, 1981 and Sunday, July 12, 1981. In fact, there is no dispute that during the workweek Claimant performed the ballast regulator work, that he was qualified to do so, and that the weekend in question was not assigned to an "available extra or unassigned employe." This interpretation of Rule 62(m) and its applicability in the case at bar is consistent with numerous past awards of the National Railroad Adjustment Board (Third Division 5925, 9436, 14191, 23073).

This Board firmly holds therefore, that Claimant R. G. Denney should have been called since he was the regular assigned employe as envisioned by Rule 62(m). During the progression of this claim on property, dispute occurred as to whether or not Carrier personnel attempted to call Claimant on Friday, July 10th for said work, as Carrier contends was done. While this Board finds such argument persuasive with respect to Carrier action on Friday, July 10, 1981, it does not do so with respect to the second day in question. The Board finds nothing in the record to indicate that Carrier personnel attempted to contact Claimant on Saturday, July 11th for work on Sunday, July 12, 1981.

This Board rules that the call made by Carrier personnel on July 10th to Claimant was for work on Saturday, July 11, 1981. His claim for that date will be denied. It further rules that Carrier had an obligation to make a reasonable effort to contact Claimant on Saturday, July 11th for work to be done on Sunday, July 12, 1981, and as Claimant was not called, his claim for that date will be sustained at the time and one-half rate. This ruling is consistent with past rulings of the Third Division of the National Railroad Adjustment Board (16279, 22922, 23071, 23073, 23401, 23462). Claimant will not receive a per diem allowance for meals and lodging facilities, since such is intended reimbursement for expenditures which Claimant did not incur.

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 violated.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1984.