

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24943
Docket Number MW-25117

Thomas F. Carey, 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 Carrier violated the Agreement when it called and used Mr. M. S. Beason instead of Mr. K. W. Wisener to perform overtime service on March 20 and 21, 1982 (System File B-1575-1/MWC 82-7-22A).

(2) Claimant K. W. Wisener shall be allowed eleven and one-half (11-1/2) hours of time and one-half pay because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimant was regularly assigned as a Trackman on Gang 721 headquartered at Hugo, Oklahoma. He worked under the supervision of Foreman B. L. Garman. Both Claimant and Mr. M. S. Beason hold seniority in the foreman's class.

On March 20 and 21, 1982, the Carrier called Foreman Garman to perform overtime service patrolling track. In addition, the Carrier called Mr. Beason to assist Foreman Garman. Mr. Beason, who is assigned to Gang 712, has greater seniority than Claimant in the foreman's class. However, Claimant is the most senior employe on Gang 721, the same Gang to which Foreman Garman is assigned.

The Carrier insists that by calling Mr. Beason it was following the time honored principle of seniority. That is, Beason was more senior than the Claimant.

The Organization, however, points out that Mr. Beason does not hold seniority in Gang 721, the Gang to which Foreman Garman was assigned. It contends, therefore, that the most senior employe of that Gang, who was the Claimant, should have been called.

The controlling provision of the Agreement is Rule 57(b). It reads as follows:

"(b) When overtime service is required, the foreman of gangs needed will be called and the foreman will call in seniority order, the number of men in the gang necessary to perform the work for which called."

The entire record has been reviewed. It establishes that the work in question was overtime work which is governed by Rule 57(b). In addition, the record establishes that neither Gang No. 712 nor Gang No. 721 was required for the overtime service. Instead, a patrol Gang was needed to perform this work on March 20 and 21, 1982.

Here, the most senior foreman was called to head that patrol Gang. Similarly, the Carrier was obligated to call, as it did, the most senior employe for the assistant foreman's position.

This position is substantiated by the language of Article 57. It requires that the men in the "gang necessary to perform the work" will be called in seniority order. Since the gang necessary was neither Gang No. 712 nor Gang No. 721, it follows that the most senior employe of both Gangs and not of Foreman Garman's Gang should have been called.

Furthermore, it is a time honored principle in the railroad that seniority should be honored so long as the employes are qualified to perform the required work. In Award No. 14161, that Board held:

"It is our view that unless there is a rule in the agreement or a negotiated local practice providing for the assignment of overtime on some basis other than seniority, that seniority should be the determining factor."

As noted above, Rule 57(b) does not allocate overtime on a basis other than seniority. Therefore, it was appropriate for the Carrier to assign overtime on this basis, in accordance with tradition and custom in the industry. For these reasons, then, the claim must 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 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

