

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25128
Docket Number MW-25163

Edward L. Suntrup, Referee

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

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

(1) The Carrier violated the Agreement when it used junior employees assigned to Gang 441 to perform overtime service from 5:00 P.M. to 10:00 P.M. on February 4, 1982 instead of using Mr. J. Chaffin who was senior, available and willing to perform that service (System File B-1018/MWC 82-8-17B).

(2) The claimant shall be allowed five (5) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: By letter dated March 3, 1982 the Carrier received a pay claim from the Organization on behalf of Claimant J. Chaffin. After the claim was denied on property and then appealed by the Organization up to and including the highest Carrier officer designated to hear such it is now before the National Railroad Adjustment Board.

The Claimant holds seniority rights as a trackman from May 24, 1971 and seniority rights as a foreman dating November 12, 1975. On February 4, 1982 the Claimant held regular assignment as Assistant Foreman on Gang 441. On that date the Roadmaster instructed Gang 441 to do emergency service at Carrier's Springfield (Missouri) Yard. This emergency service, which started at 4:00 P.M., was worked by Gang 441 at overtime rate. At 5:00 P.M. the Roadmaster determined that the full gang complement was not required to do the work in question; The Claimant, as Assistant Foreman, and three (3) junior trackmen were informed that their services were no longer needed. Only the foreman and five (5) trackmen were retained on the job at overtime rate until 10:00 P.M.

The instant claim centers on the contention by the Claimant that he had trackmen rights to work overtime from 5:00 P.M. until 10:00 P.M. under Rule 57(b) of the current Agreement since some or all of the trackmen actually retained to complete the work on the evening of February 4, 1982 were junior to him in seniority. Rule 57(b) reads, in pertinent part:

"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."

There is no dispute by the Carrier that the Claimant was senior as a trackman on the day in question. On that day, however, he held regularly bulletined assignment as Assistant Foreman. Neither is this fact disputed in the record by the Organization.

A review of the record shows no evidence that the Carrier lacked authority to assign various personnel as a managerial prerogative to reasonably accomplish the job at hand. Indeed, this Board has always held, as a general principle, that Carriers possess such right unless restricted by contract (Third Division Awards 18601, 19596, 21617). In the instant case the Carrier determined, as an application of this principle, that it did not need to fill the position of Assistant Foreman on Gang 441 on overtime basis to accomplish the emergency assignment after 5:00 P.M. on February 4, 1982. Further, the Board finds it unreasonable to impute to the intent of the parties, when they framed Rule 57(b), to mean that when an employee bids on and receives a bulletined position that this same employee, while holding that bulletined position, also at the same time retains seniority for the purposes of overtime assignment in the seniority class from which he came prior to accepting the bulletined position. Such is the substance of the instant claim. To sustain it would be to set precedent whereby any employee who bids on and accepts other assignment(s), irrespective of how many bulletined assignments and/or promotions this might imply, would also logically retain overtime rights in seniority class of prior positions held. To interpret Rule 57(b) of the Agreement in that manner,... is clearly to go beyond the bounds of the language of that Agreement provision.

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: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.

