

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25182
Docket Number NW-25229

Edward L. **Suntrup**, Referee

(Brotherhood of Maintenance of way **Employees**)
PARTIES TO DISPUTE: {
(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 assigned junior Machine Operator **J. A. Walter** to **perform** overtime service on March 13, 1982 instead of calling and using Machine Operator **J. J. Short** who was senior, available and **willing** to perform that service (System File **B-809-1/MWC82-8-17A**).

(2) Machine Operator **J. J. Short** shall be allowed eight (8) hours of pay at his time and one-half rate because of the violation referred to in **Part (1)** hereof.

OPINION OF BOARD: A pay claim was filed by the Organization on April 29, 1982 under current Agreement Rule 57(h) or behalf of the Claimant, Machine Operator **J. J. Short**. It is the contention of the Claimant that the Carrier was in violation of the cited Rule when it assigned overtime work to fellow **employee J. A. Walter** on March 13, 1982 in lieu of himself.

Both the Claimant and Mr. **Walter** were permanently assigned to Carrier Gang 443 at the time of the incident. During the week of March B-12, 1982, Mr. Walter was assigned as a temporary **employee** to work with Gang 444. On March 12, 1982, members of Gang 444 and **employees** working for that Gang, including Mr. Walter, were requested to work on Saturday, March 13th. Mr. Walter agreed to work overtime on Gang 444 on that date. He did so and was paid. Since the Claimant is senior to Mr. Walter, it is his claim that the work on Gang 444 on March 13, 1984, should have been made available to him rather than Mr. Walter. The Claimant's seniority date is August 27, 1968. Mr. Walter's seniority date is November 10, 1969.

In denying the claim on property, the Carrier's **Director** of Labor Relations states the Carrier's position as follows:

"When overtime was required to be worked by Gang 444 on March 13, all **members** of the Gang were asked, including Mr. Walter. This was fully in accord with Rules 56 and 57 of the Schedule Agreement. Because Mr. Walter worked with Gang 444 all week, he properly stood for the overtime and not Claimant Short. Panel Plant Gang 443 did not perform any overtime service on March 13, 1982:

A review of the record shows that Mr. Walter was assigned to Gang 444 on temporary assignment for the week before this Gang was requested to work overtime because the Carrier's **Dismantle** Plant was **not** working. Mr. Walter was a regularly assigned Operator on Gang 443 at the Dismantle Plant. Thus Mr. Walter's real assignment for the week prior to the overtime worked by Gang 444 was to that Gang because there was no work available for him at his regularly assigned Gang. The Agreement Rule on which the Claimant relies in the **instant** claim reads as follows:

Rule 57(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 language of this Rule makes no distinction between regular and temporary assignments. The language of the Rules does say, however, that the Foreman will call the number of men in the gang necessary to perform the work when overtime is needed. The Gang that was necessary was Gang 444. Mr. Walter was a member of that Gang on temporary assignment. He was assigned to that Gang because there was no work for him on his regularly assigned Gang. The Claimant basically reasons that an employee on temporary assignment to a given Gang is not really a member of that Gang with **respect** to **overtime/seniority** rights, but that such rights derive only from the **Gang** to which one is regularly assigned irrespective of whether there is work or not on one's regular assignment.

In its Submission to the Board the Organization references a number of past Board Awards. These Awards deal either with the laxity of a Carrier to attempt to notify a more senior employee in a given seniority district (Third Division Awards 1862, 4200); the passing over of a senior employee because such an employee did not request overtime (Third Division Award 16022); or the obligation of Carriers to **use** the criterion of seniority if they elect to choose **"Extra Gang.?" employees** for given work assignments (Third Division Awards 6306, 7062, 13177, 13833). These Awards are not four-square, however, with the circumstances of the instant case. All things being equal between two employees this Board does not disagree that the proper interpretation of current Agreement Rule 57(b) should be that the Carrier attempt to notify the most senior employee from an Extra Gang. The instant case is one, however, whereby one employee already had a temporary assignment to a Gang different from his regular one prior to the need for overtime work on that Gang. The single piece of information which the Organization consistently neglects to underline in its reasoning in the instant case is that during the week prior to March 13, 1982, there was no work for Mr. Walter to do in his regularly assigned position. Thus he had the apparent choice of working where assigned by the Carrier on temporary **basis** or of going on furlough. His decision to accept work on Gang 444 gave him temporary status on this Gang and, in the estimation of the Board, the rights associated with this temporary status. The Organization's contention that the Carrier's argument that Mr. Walter was **"temporarily assigned"** is "sophistry, is rejected by the Board. The fact of the matter is that Mr. Walter would have been on this temporary assignment or on furlough during the week prior to **March** 13, 1982. Thus all things were not equal between the Claimant and Mr. Walter. The Claimant had work to do on his regularly assigned Gang 443. Mr. Walter did not.

The Claimant. as moving party, has failed to meet the test of substantial evidence, given the facts of this particular case, to warrant conclusion that the Carrier was in contravention of the current Agreement.

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

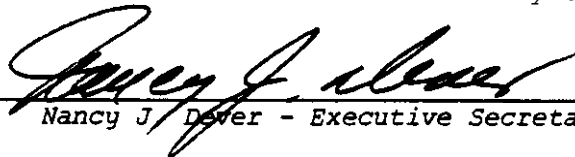
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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