

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25881
Docket Number MW-25468

Lamont E. Stallworth, 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 assigned junior Trackman-Driver R. Barry to perform overtime service on August 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, September 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, October 2, 3, 4, 8, 9, 10, 11, 12, 17, 18, 19 and November 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 16, 1982 instead of using Trackman-Driver W. G. Reed, Jr. who was senior, available and willing to perform that service (System File B-1632/MWC 82-12-8).

(2) Claimant W. G. Reed, Jr. shall be allowed one hundred twenty-one (121) hours of pay at the trackman-driver's time and one-half rate in effect on the claim dates."

OPINION OF BOARD: There are a considerable number of issues involved in this claim which make it unique in many ways. The Organization apparently did not follow the usual manner of appeal, the claim started out vague and then became specific, some of the hours claimed for overtime were hours that Claimant was actually paid overtime doing different work, and so on.

The essence of the dispute, however, is whether Claimant was offered the overtime involved, and whether he declined it. It is not disputed that the overtime was offered on the first day, and that Claimant declined it (although still claiming a right to compensation for that day). The Carrier contends that on August 2, 1982 Assistant Roadmaster Schmidt "... asked Claimant Reed if he was interested in working overtime fueling machines after the gang tied up each day. The Claimant replied in the negative, stating he was already working enough overtime on his assignment and did not, then, want the additional overtime which was offered to him." (Emphasis added).

The Board finds the record indicates that Claimant was declining overtime in an on-going manner for specific work, and accepting other overtime. Claimant did, in fact, accept other overtime. The Board therefore, cannot agree that Claimant can subsequently retroactively undo his declination.

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

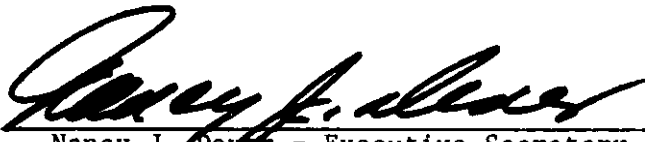
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.