

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26416
Docket Number MW-26607

Edwin H. Benn, Referee

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior Repairman R. B. Barton to perform overtime service in connection with a derailment at Conklin, New York on January 17, 1984 instead of using Repairman J. E. Hurlburt, Jr. who "as senior, available and willing to perform that service (System Case 22.84).

(2) Claimant J. E. Hurlburt, Jr. shall be allowed seven (7) hours of pay at his time and one-half rate."

OPINION OF BOARD: As a **result** of a derailment on January 17, 1984, at the Carrier's Binghamton Yard, Work Equipment Repairman R. B. Barton (whose seniority "as junior to Claimant's) "as continued past his tour of duty and thereafter accumulated seven hours of overtime. Claimant (who holds the same position as Barton and who "as **assigned** and headquartered at **Oneonta**, New York, approximately 65 miles from the derailment site), asserts that he "as improperly denied the overtime given to Barton.

The Organization carries the burden of proving the violation but has cited no rule to cover the instant Claim. We cannot say that this case involved preplanned overtime. In such situations and in the absence of a rule to the contrary, the Carrier **can** assign overtime work needed to complete the assignment to the junior **employee** who "as performing that work at the end of his tour of duty. See Third Division Awards Nos. 26385, 24519, 24235.

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 "as not violated.

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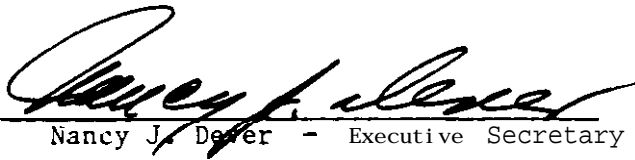
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.