

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26478  
Docket Number MW-26263

Rodney E. Dennis, Referee

(Brotherhood of Maintenance of Way **Employes**  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Western Lines)

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

1. The Carrier violated the Agreement when it assigned junior Tractor-Bulldozer Operator K. D. McDaniel to perform overtime service on February 19, 22 and 23, 1983 instead of using Tractor-Bulldozer Operator R. R. Allen who was senior, available and willing to perform that service (Carrier's File MofW 148-514).

2. Claimant R. R. Allen shall be allowed eleven (**11**) hours and forty (40) minutes of pay at the tractor-bulldozer operator's time and one-half rate in effect on the claim dates."

OPINION OF BOARD: On February 19, 22, and 23, Carrier used Operator **K. D.** McDaniel to perform overtime service for a total of 11 hours and 40 minutes. The Claimant is senior to McDaniel and claims he should have been used to perform the overtime work. Carrier contends that Claimant made it known to Carrier officials that he was not available to perform emergency or short-time work outside the Oak Ridge District where he lived. On February 19, 1983, as a result of storm damage near Rosebury, Oregon, in the **Rosebury** District, Carrier used Operator McDaniel to perform the work.

This Board has reviewed the record of this case and must conclude that a" irreconcilable **dispute of** a material fact exists that makes it impossible to fairly decide the case.

Carrier states that Claimant informed his Supervisors that he was not available for short-time or emergency work outside the Oak Ridge District. Claimant denied such a statement. We have no way, based on the record, to decide the dispute. Under similar circumstances, this Board has dismissed such claims. We therefore shall do the same in this instance.

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

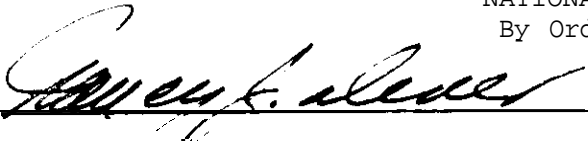
That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.