

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26710

Docket Number MW-26466

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

1. The Carrier violated the Agreement when it assigned junior employe R. A. Cunningham instead of Mr. R. C. Decker to perform overtime service on November 25 and 26, 1983 (System Docket CR-624).

2. Because of the aforesaid violation, Mr. R. C. Decker shall be allowed twenty-five (25) hours of pay at the Machine Operator Class II time and one-half rate for November 25 and 26, 1983."

OPINION OF BOARD: On December 27, 1983, a Claim was filed by the Claimant for overtime pay for the dates of November 25 and 26, 1983. The Claim alleged that an employee junior to the Claimant had been assigned to work the Machine Operator Class II position at the Carrier's Avon Yard on those dates. The Claim was denied by the Carrier the following day. Reasons for the denial, as outlined by the Division Engineer, were the following:

"(w)hen the machines from Gang SE-830 were brought to Avon Yard, all of the Operators were asked to work the machines on these dates. Since none of the Operators wanted to work, the machines were worked by men at Avon . . . in the SE-832 Gang. You were on a Trackman position and not entitled to work these machines."

In response to this the General Chairman of the Organization argued, on appeal:

"(t)he Claimant contends that as a member of Gang SE-830, possessing Machine Operator Class II rights senior to (the Gang SE-832 Machine Operator who worked on November 25 and 26, 1983), he should have been used to move the machinery on an overtime basis."

It is the position of the Organization that the Carrier was in violation of Rule 3, Sec. 4(a) and (f) when it went to another gang for a Machine Operator to operate equipment which was regularly assigned to Gang SE-830. This Rule reads, in pertinent part, as follows:

"Rule 3, Sec. 4. - Filling Temporary Vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.

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(f) Vacancies which are not advertised may be filled in like manner."

On the other hand, it is the contention of the Carrier that the applicable Rule here is Agreement Rule 17. This Rule reads as follows:

"Rule 17 - Preference for Overtime Work

Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

After studying the record before it the Board must conclude that the issue before it more properly deals with overtime. Compensation requested in the Claim is at that rate. The correct Agreement Rule applicable to this case is not Rule 3 as the Claimant contends, but rather Rule 17 which addresses the issue at bar. According to the record the Claimant's ordinary and customary assignment at the time was that of Trackman and not Machine Operator. Further, neither Rule 3, 17 nor any other cited in the record establishes that the Carrier does not have the right to go to another gang to seek qualified Operators absent one ordinarily and customarily working a gang where it has equipment in need of Operators. The Organization argues that a proper criterion for assignment on overtime basis is the "... equipment assigned" to a given gang and not the employees holding bulletined positions. The Board can find no Agreement support for such line of reasoning.

There is insufficient evidence in the record to warrant the conclusion that the Carrier was in violations of contract. On merits the Claim cannot be sustained.

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

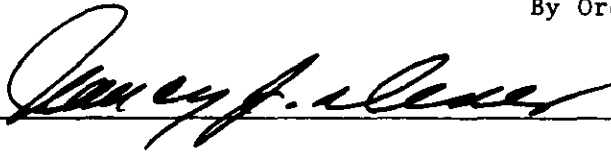
That the Agreement was not violated.

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 23rd day of November 1987.