

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

(1) The Agreement was violated when the Carrier called and used junior employees to perform overtime service on October 27, 1984 and November 3, 1984 instead of Track Foreman R. G. Gonzalez, Laborer-Driver A. **Maldonado** and Track Laborers R. S. Perez and M. Castillo (System File MW-85-28).

(2) The claimants shall each be allowed twelve (12) hours of pay at their respective time and one-half overtime rates as a consequence of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In this dispute, a Track Foreman, a Laborer-Driver and two Laborers claim pay for overtime work performed on two separate occasions by Foreman Rayna, two Laborers and a Machine Operator.

There is no dispute that Foreman Rayna and the three employees utilized in overtime service were junior to the Claimants. Further, there appears to be no dispute as to the general application of the seniority rules cited by the Organization.

As far as can be determined from the record, however, the Board finds no seniority violation in the Carrier's actions. According to the Carrier's uncontested statement, Rayna was used on the two occasions in his regularly assigned duties as Inspection and Repair Foreman. Upon determining the necessary work required, Rayna called the senior Foreman (**Cortez**) to perform the work. The Organization raises no questions concerning the assignment of **Cortez**. **Cortez** in turn called senior members of his gang to perform the work.

Confusion seems to have developed by the apparent contention that the work **was** performed by Foreman Rayna and Laborers junior to the Claimants. As best as can be determined from the record, what actually occurred is that Rayna acted in his capacity as Inspection and Repair Foreman, and the work was assigned to the senior Foreman (**Cortez**) and his gang.

The Carrier contends that this is regular practice under such circumstances and that there is no precedent for calling a senior Foreman and then seeking out senior Laborers from among the seniority district. The Board finds no evidence that the Carrier failed to follow seniority **as** regularly interpreted under such circumstances.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

Attest:


Nancy J. Deyer, Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.