

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

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

(1) The Agreement was violated when Section Foreman V. Miner and Trackman H. Utter were not used to perform overtime service on their assigned section territory ('LK' to 'FH') on November 19, 26 and 27, 1983 (System file 14.84).

(2) Section Foreman V. Miner and Trackman H. Utter shall each be allowed five (5) hours and twenty (20) minutes of pay at their respective time and one-half rates because 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 employee 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.

The Claimants hold seniority as a section foreman and trackman and were regularly assigned to Section Gang T-50. This gang is headquartered at Bainbridge, New York, and assigned to perform maintenance between "FH" Cabin and Bainbridge. On Saturday, November 19 and 26, and Sunday, November 27, 1983, employees assigned to Extra Gang T-46 patrolled and repaired track within the above-cited section territory of Gang T-50. The Organization charges that Extra Gang T-46 was, thereby, working outside of its assigned work limits asserted to be between Mile Post 188 and 185.8. Relying on Rule 15 1/2(j), the Organization argues the work in question was performed on two Saturdays and a Sunday, which are rest days and not a part of an assignment. Accordingly, the Organization insists the work should have been performed by the regular employees at the overtime rate. Rule 15 1/2(j) reads:

"(j) Work on Unassigned Days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Carrier in denying the claim on the property informed the Organization by letter of December 29, 1983, that:

"...Gang T-46 is bulletined as a second subdivision gang and was, therefore, properly within their limits when the alleged violation occurred."

This Board's review of the record finds that this assertion has not been rebutted by the Organization through the introduction of probative evidence. Given this important factor, the Organization's position cannot be sustained since it was unable to meet its burden of proof.

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 June 1988.