Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27195
THIRD DIVISION Docket No. MW-26872
88-3-85-3-645

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The Carrier violated the Agreement when it assigned a junior crane operator to perform overtime service on August 6, 1984, instead of calling and using Crane Operator C. Barrett, who was senior, available and willing to perform that service (System Docket CR-1229).

(2) Crane Operator C. Barrett shall be allowed six and one-half (6 1/2) hours of pay at his time and one-half rate."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On August 6, 1984, Carrier assigned a junior employee to operate the crane which was normally operated by Claimant. By letter of August 16, 1984, the Organization protested Carrier's action, arguing that the overtime assignment worked by the junior employee was rightfully work which by Agreement belonged to Claimant. Since the overtime had not been offered to the proper employee, the Organization requested payment for Claimant's loss.

The Carrier asserts that the events of August 6, 1984, were quite different. Claimant was offered the overtime in accordance with Rule 17 of the Agreement. In offering the Claimant preference in the assignment of hauling stone to road crossings, which required the use of the crane in loading, Carrier fully complied with the Agreement. Carrier asserts that Claimant refused the overtime work. As such, it was offered to a junior employee.

Our review of the record as developed on property finds irreconcilable facts, leaving this Board without probative evidence to decide the Claim. By long established precedent, this Board cannot and will not attempt resolution of any claim for which the essential facts are disputed and there is insufficient probative evidence to make a determination of fact (Third Division Awards 26224, 26200). Accordingly, we have no choice but to dismiss this Claim.

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 23rd day of June 1988.