

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 bridge operator to perform overtime service on September 15, 1984 instead of calling and using Bridge Operator R. E. Crowley who was senior, available and willing to perform that service (System Docket CR-1243).

(2) Bridge Operator R. E. Crowley shall be allowed eight (8) 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 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.

The essential facts of the instant case are not disputed. Claimant holds seniority as a Bridge Operator headquartered at Point-NoPoint Bridge, Kearney, New Jersey. On September 14, 1984, a junior Bridge Operator, assigned to work the 3:00 P.M. to 11:00 P.M. second shift, continued on to work the third shift when his relief did not report. Junior Bridge Operator was paid for eight hours overtime service at the Bridge. Claimant was the senior employee, off duty and available to be called.

Claim of the Organization is for compensation in that Claimant was denied his seniority rights to the overtime. The Organization asserts that the violation has been admitted and the overtime has been paid to the junior employee. As the Agreement was clearly violated, the Claim should be paid.

The Carrier asserts that the junior Bridge Operator worked the overtime without authority and without following his supervisor's instructions on reporting when his relief did not arrive. It also notes that the relief employee failed to follow the instructions of his supervisor. Had the relief employee called it in to be marked off sick, the Carrier would have had knowledge of the events at the Trouble Desk. Had Carrier been aware, it would have received the name of the senior qualified available employee entitled to the overtime and called him. The Carrier argues that it cannot be held responsible for any liability as neither employee followed their supervisor's instructions and no supervisor issued any orders which resulted in the violation.

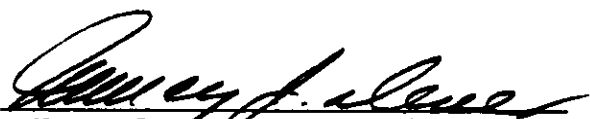
The Board has reviewed the record and finds that the Claimant has been wronged. The question at bar is whether the Carrier has liability in these circumstances. Neither the wrongful actions of junior Bridge Operator or of the third trick employee were with the knowledge or instructions of the Carrier. There is no evidence of record that any authorized agent of the Carrier was aware of or issued any instruction that resulted in the wrong done to Claimant. Finding no principal-agent relationship in the record and no probative evidence that the overtime work was performed with Carrier authority, instruction, knowledge, or direction, the wrong has no remedy. The record does not contain evidence by which this Board can conclude that the Carrier is liable for the wrong which occurred. This Board is thereby constrained to deny the claim.

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.