

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  
(  
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned junior B&B Carpenters R. E. Portis, T. M. Hauptman, T. G. Bowley and M. D. Minor to perform overtime service on October 6, 1984 instead of B&B Carpenters S. M. Foster, R. S. Lamb and J. C. Stinn who were senior, available and willing to perform that service (System File M-90/013-210-35).

(2) Claimants S. M. Foster, R. S. Lamb and J. C. Stinn shall each be allowed seven (7) hours of pay at their respective time and one-half rates.

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.

This dispute concerns carpentry work on an unassigned overtime day (Saturday, October 6, 1984) in Carrier's Omaha headquarters. Such work was assigned to four employees of B&B Gang 1423. Three of the employees so assigned were junior to the three Claimants, who are also assigned to Gang 1423. There is no dispute that the Claimants were available for the overtime work.

The Organization argues that the Claimants were entitled to be called in place of three junior employees based on their seniority rights. (A fourth employee who worked was also cited in the Claim, but he was senior to one of the Claimants.)

Absent other considerations, there is no doubt as to the Claimants' entitlement to be called for the work in question. This is true despite the

absence of a rule specifying that employees should be called in seniority order for overtime work. The Organization cites numerous Awards to this effect, including Third Division Awards 11032, 14161, and 21421. Award No. 21421 states, as an example:

"The Awards of this Division are persuasive to the effect overtime of a given class must be assigned on the basis of seniority even where there are no specific rules in the Agreement covering the situation."

The above reasoning does not apply, of course, where there are rules governing overtime assignment on a basis other than seniority. The Carrier here relies on two such rules, as follows:

RULE 26

"(h) WORK ON UNASSIGNED DAYS. Where work is required by the Company 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 forty (40) hours of work that week; in all other cases by the regular employee."

RULE 35

"(k) PERFORMANCE. In the performance of overtime work on unassigned days employees regularly assigned to work in a higher seniority class will not be permitted to displace employees regularly assigned to work in a lower class."

It is the Carrier's contention that these Rules required the assignment of the employees who worked, instead of the Claimants. The Carrier states that these employees were employed on the headquarters' remodeling assignment "from the start" and continued their work on the Saturday in question. This is not disputed. Further, the Carrier argues that for the previous two weeks the three Claimants had been assigned to other, higher paying positions and thus, under Rule 35(k), were not entitled to the work. The Organization contends that the three Claimants worked as Carpenters on the day preceding the overtime. This conflict in fact is not resolved for the Board.

The Board is not convinced by the Carrier's Interpretation of Rule 26(h). "Regular" employee is not defined here as the employee assigned to a particular task immediately preceding overtime opportunity; rather, it simply distinguishes such employee from an "extra or unassigned employee." As to the Claimants being "regularly assigned to work in a higher seniority class" (Rule 35(k)), the Organization contends without contradiction that the Claimants were not "regularly" assigned to the "higher" positions by bulletin but retained their standing in Gang 1423. (This argument is even stronger if, as the Organization claims, the Claimants worked in their bulletined positions immediately preceding the overtime.)

The Carrier's argument that employees assigned to the remodeling work should continue to perform such work on overtime, in preference to other available employees in the same seniority group, would be persuasive if the Agreement so provided, but it does not do so.

The Carrier also disputes the propriety of payment at the punitive rate. In keeping with the predominant view of this Division and in the absence of demonstrated practice to the contrary on the property, the Claim will be sustained as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.