

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Maine Central Railroad Company  
(Portland Central Railroad Company

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

(1) The Carrier violated the Agreement when on July 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 28, August 1, 2, 3, 8, 9 and 10, 1983 it assigned and used Machine Operator E. A. Douin to perform trackman's work on an overtime basis instead of assigning and using Trackman G. B. Hart (Carrier's File MW-84-3).

(2) Because of the aforesaid violation, Trackman G. B. Hart shall be allowed seventy-seven (77) 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 the dates in dispute, production crews were installing ballast and when the work continued past eight (8) hours, overtime was assigned in accordance with seniority.

The instant dispute centers on the assertion by the Organization that Claimant had trackman seniority rights to work the overtime in question under Article II, Rule 2 of the Agreement. The Organization argues that although the machine operator had established and held seniority as a trackman he is not entitled to the overtime services on these dates since he was employed as a machine operator. The Organization further relies on Rule 4 which specifically restricts the seniority rights of employees to the class in which they are employed.

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89-3-85-3-233

Carrier relies on past practice in its selection of Douin to perform the disputed overtime. It contends that numerous classes of employees (foreman, assistant foreman, machine operator, or truck driver) all have trackman rating and are all capable of performing the duties in that field. Therefore, Carrier concludes that it was not improper to assign the machine operator to perform overtime as a trackman.

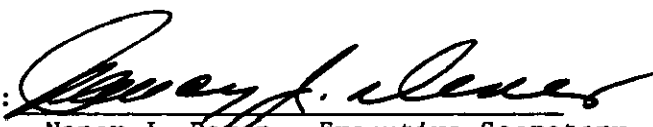
A review of the record shows that it was necessary to assign employees to work overtime to complete work necessary to prepare the track for service. However, it is clear to this Board that the work involved herein accrues to trackmen and, as such, the senior trackman is entitled to perform that work. The fact that the machine operator, previously held trackman rights does not entitle him to the overtime rights in the seniority class of a prior position (Third Division Award 25128). Because of Carrier's violation, Claimant lost the opportunity to perform work and is entitled to a monetary claim. The claim is therefore sustained as requested.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.