

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Seaboard System Railroad)

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

(1) The Agreement was violated when the Carrier assigned junior Cook J. L. Bryant instead of Cook W. J. Wilson to perform overtime service on System Force 5X11 on a regular basis during January and February 1986 [System File WJW-86-21/12-27(86-261) Q].

(2) As a consequence of the aforesaid violation, Claimant W. J. Wilson shall be compensated for all overtime wage loss suffered beginning sixty (60) days retroactive from March 25, 1986 and continuing until such time as the violation is corrected."

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.

At the relevant time, Claimant and J. L. Bryant held positions as cooks on Rail Gang 5X11 at Lakeland, Florida, with Claimant being the senior employee. The record shows that the Carrier operated two separate kitchens for that gang. In this matter, Claimant asserts that, as the senior employee, he was entitled to cook's overtime performed by the kitchen in which Bryant worked.

The Carrier, through the statement of its Production Supervisor, asserts that when Claimant first came to the gang in December 1985, he was advised that two kitchens were operated with Claimant as the senior cook in one kitchen and Bryant as the senior cook in the other. The Production Supervisor also stated that Claimant was informed that by practice, overtime for a kitchen would be handled with respect to the individual kitchen. Further, according to the Production Supervisor, Claimant voiced no exception to this arrangement.

The Organization disputes the Production Supervisor's assertions. Specifically, the Organization asserts that Claimant denies that he acquiesced with respect to the handling of overtime on a kitchen by kitchen basis.


In this contract dispute, the Organization carries the burden of demonstrating a violation of the Agreement. At best, there is an irreconcilable dispute in facts. Therefore, the Board has no alternative but to dismiss the 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 28th day of February 1992.