

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29353
Docket No. MW-29018
92-3-89-3-444

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
(
(CSX Transportation, Inc. (former Seaboard System
(Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned a Florence Division Seniority District employee to perform welding work at Mile Post locations 353.1, 348.0, 348.1, 350.1, 357.4, 365.1 and 352.3, on the Abbeville Subdivision, Atlanta Division Seniority District on October 17, 18, 19, 20, 24, 25, 26 and 27, 1988 [System File 37-SCL-88-58/12(89-2) SSY].

(2) As a consequence of the violation in Part (1) hereof, Claimant C. D. Coleman shall be allowed eighty (80) hours' pay at his straight-time rate and seven (7) hours' pay at the 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.

The Claimant holds seniority as a Welder on the Atlanta/Waycross Division seniority district. Between October 17 and 27, 1988, the Carrier assigned a Welder from the Florence/Savannah Division seniority district to perform welding work on the Atlanta/Waycross Division, involving eighty straight-time hours and seven overtime hours.

The Organization relies on appropriate Rules to argue that the work was improperly assigned and that the Claimant's seniority right to such work was violated. The Carrier offers argument as to the "emergency" nature of the work, but this, as pointed out by the Organization, was not raised on the property and cannot appropriately be considered by the Board.

The Board finds support for the Organization's position. One of the defenses raised by the Carrier is that the Claimant was fully employed on the dates at issue. In this regard, Third Division Award 25964 is of guidance. That Award states, in determining a similar dispute on another CSXT component road, reads in pertinent part, as follows:

" . . . the Carrier disputes the propriety of the Claim on the basis that the Claimants were already under pay at the time the work was performed, one being employed elsewhere and one on vacation. The Board finds this an inadequate defense. Rule 2 specifically directs that seniority be 'confined.' To follow the Carrier's reasoning here would permit the indiscriminate use of employees in contradiction to the Rule. Where, as here, the seniority rights of employees are violated, a remedy is appropriate consonant with the violation involved, as established in a myriad of other Awards."

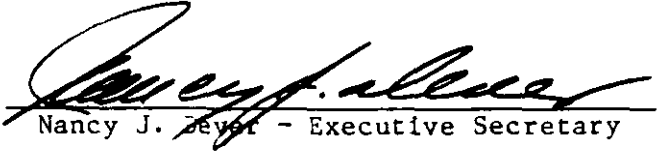
The Board notes that the Carrier has unilaterally paid the overtime portion of the Claim, and thus the Claim is sustained only to the extent of the straight-time hours.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.