

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 Agreement was violated when the Carrier assigned junior employe R. Daum instead of Mr. D. Foutz to perform overtime service at South Akron on April 23, 1989 (System Docket MW-608).

(2) As a consequence of the aforesaid violation, Mr. D. Foutz shall be allowed thirteen (13) hours of pay at the trackman's 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 issue to be decided here is whether, by virtue of the Agreement and his normal work week assignments, the Claimant was entitled to perform the overtime service in question.

Claimant entered Carrier service in August, 1975. At the time of the dispute, he was a temporary trackman assigned to the I&C gang headquartered at South Akron Yard, Akron, Ohio. His tour of duty was 7:00 A.M. to 3:30 P.M., rest days of Saturday and Sunday. The junior employee who worked the overtime entered service in May, 1978, and was working a temporary trackman vacancy for Basic Maintenance Gang #1682, also headquartered at South Akron Yard.

During the week of April 17 through 21, 1989, Claimant's gang was assigned to upgrade the main track of the Akron Branch. During the same period of time, Basic Maintenance Gang #1682, maintained and repaired track, both

main and yard. The record convincingly establishes that Maintenance Gang #1682 regularly was used for any derailment work necessary in the territory and the I&C Gang was not regularly so utilized.

On Sunday, April 23, 1989, a derailment occurred at the South end of the Akron Yard, and Maintenance Gang #1682 was called out on overtime to perform necessary repair work, which included the junior Trackman.

On May 8, 1989, the Organization submitted protest on behalf of Claimant for 13 hours pay at overtime rate citing violation of Rule 17. The Division Engineer denied the Claim which was then progressed up to and including the Senior Director-Labor Relations, the Carrier's highest appeals officer. Claim was denied by Senior Director on January 7, 1990.

Rule 17, pertinent to the instant dispute, reads as follows:

"RULE 17 - PREFERENCE FOR OVERTIME WORK

Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

Under the cited rule, overtime preference will be afforded to qualified, available employees who ordinarily perform the tasks during the course of their work day/week. When the derailment occurred on April 23, 1989, the Carrier determined that overtime was required. Carrier arranged for Gang #1682, customarily used to repair derailments, to perform the work. Carrier also points out that such derailment work was not work ordinarily and customarily performed by the Claimant's I&C Gang. According to Carrier, therefore, Claimant was not entitled to be called to work overtime on that derailment work, nor was any member of the I&C Gang.

For its part, the Organization asserts that the Carrier violated the Agreement when it assigned a junior employee, rather than the Claimant, to perform the overtime service on April 23, 1989. Claimant was available and fully qualified to perform the overtime work, and as senior employee, should have been called upon to do so. For these reasons, Organization maintains that Claimant is entitled to receive the remedy requested.

There is no question that Claimant is senior employee in this dispute, however, the distinguishing point remains that the task in question was not work the Claimant ordinarily and customarily performed. While the two gangs may have been working "shoulder to shoulder" performing track rehabilitation work, the junior employee's gang was routinely used to work derailments, whereas the Claimant's gang was not.

On these particular facts, the Board finds no probative evidence that the Agreement was violated. Therefore, this Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.