

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29555  
Docket No. MW-29398  
93-3-90-3-326

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 P. Franks instead of Mr. C. H. Fancil to perform overtime work operating the boom truck on December 23 and 26, 1988 (System Docket MW-402).

(2) As a consequence of the aforesaid violation, Mr. C. H. Fancil shall be allowed sixteen and one-half (16.5) 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 employe 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 December 23 and 26, 1988, Carrier called an employe junior to Claimant to perform overtime work at Fort Wayne, Indiana. The junior employe, was paid overtime at the foreman's rate of pay for 16.5 hours. The Organization maintains that Claimant was qualified, willing, and available, and that he should have been given preference in the assignment, in accordance with Rule 17 (Preference for Overtime Work). Carrier argues that Claimant was asked to work the overtime and refused.

A review of the record reveals an irreconcilable dispute in the facts of the case. The Project Engineer contended that Claimant, as well as other members of his gang, were asked about their availability for overtime and that Claimant declined. Claimant disputes this assertion, indicating that he was not asked. His position was supported by a fellow employe who said that, to the best of his knowledge, the Project Engineer did not speak to Claimant about overtime work.

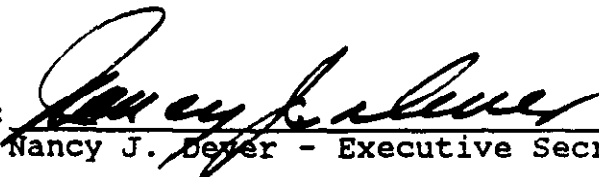
Although the Organization suggests that Carrier has failed to provide substantial probative evidence to support its position, it is the Organization's burden to break the stalemate that exists here. Given the irreconcilable dispute as to what occurred, as well as the Organization's failure to sustain its burden, the claim must be dismissed.

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 9th day of March 1993.