

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29724
Docket No. MW-29275
93-3-90-3-171

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
(
(Terminal Railroad Association of St. Louis

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

(1) The Agreement was violated when the Carrier assigned Group 2 Machine Operator R. Glenn instead of Group 1 Laborer D. Matthes to perform overtime truck driving work in Madison Yard on February 6, 1989 (System File 1989-4/013-293-16).

(2) As a consequence of the aforesaid violation Laborer D. Matthes shall be allowed three and one-half (3-1/2) 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.

This Claim concerns the assignment of work of driving a truck for 3-1/2 hours immediately following the end of the regular work day. The claimant holds seniority in the Track Subdepartment, Group 1 and is qualified as a Truck Driver (although on the day in question, as pointed out by the Carrier, he had been working as a Group 1 Laborer). The work was assigned instead to a Group 2 Machine Operator.

There is adequate Rule support for the Organization's position that the work should have been assigned to the Claimant. Rule 31, Overtime, states in part:

"Senior, available employees will be given preference in performing overtime work on call basis within the jurisdiction of their respective seniority groups"

Motor Truck Operators are included in Group 1 (c) of the Track Subdepartment. The seniority involved here refers to "respective seniority groups", that is, Group 1 as contrasted with Group 2. As recognized by the Carrier, the overtime work in question was that of operating a truck and required an employee qualified as a Truck Driver.

The Carrier notes that the employee assigned was senior to the Claimant in Truck Driver seniority and points to Rule 13 (d) concerning the filling of temporary vacancies. The Board does not perceive the assignment of 3-1/2 hours of overtime work as a new or temporary vacancy. Other Awards cited by the Carrier are based on dissimilar fact situations.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.

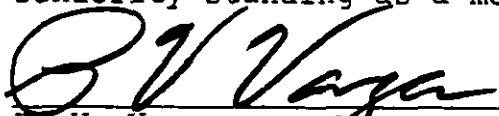
CARRIER MEMBERS' DISSENT
TO
AWARD 29724, DOCKET MW-29275
(Referee Marx)

Neither Claimant nor Mr. Glenn was assigned a truck driving position on February 6, 1989. Claimant held a first trick group 1 laborer position and Mr. Glenn was working a first trick group 2 machine operator position. It is undisputed that between these two individuals, Mr. Glenn was senior as a group 1 motor truck operator.

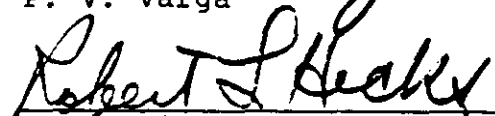
The Majority acknowledges that in accordance with Rule 31, the senior available employee will be given preference in performing overtime. Claimant was not the senior available employee. Truck driving is not exclusively reserved to Group 1(c), see Third Division Awards 13230, 22761 involving the same parties.

Rule 13(d) was not cited as justification for the use of Glenn on a temporary vacancy since there was no temporary vacancy that was involved in this case. Rule 13(d) was cited for the proposition that the Carrier had up to 30 days to establish a position and that such extra work could be handled under Rule 31 until a position was bulletined. We agree that 3 1/2 of overtime work does not require the establishment of a position.

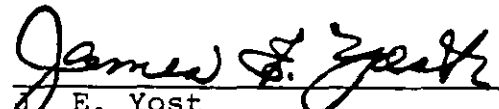
Both Claimant and Mr. Glenn had worked first trick and were available for "preference" for overtime work pursuant to the second paragraph of Rule 31(g). This decision ignores Mr. Glenn's seniority standing as a motor truck operator.


P. V. Varga


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


E. Yost