

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29740
Docket No. MW-29683
93-3-91-3-26

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
{
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor)

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

(1) The Agreement was violated when the Carrier assigned junior employes R. Pierce and J. Longmire instead of R. Baker to perform overtime service on July 18, 1989 (System File NEC-BMWE-SD-2596 AMT).

(2) Mr. R. Baker shall be compensated at his time and one-half rate for all hours worked by Messrs. R. Pierce and J. Longmire on July 18, 1989."

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 is for payment for an alleged lost overtime opportunity. It seeks compensation for Claimant at the punitive rate.

The parties' on-property record establishes an unusual set of circumstances giving rise to the Claim.

On July 6, 1989, Claimant, who was a bus driver at the time, displaced onto a fuel and lube truck driver position on a roving crew then working out of camp cars. Sometime thereafter, Carrier

was informed by the New Jersey Department of Motor Vehicles that Claimant's bus driver license was insufficient for driving the fuel truck. On July 12, 1989, Carrier informed Claimant about the licensing matter and told him he could not hold the fuel truck position until he presented sufficient proof that he was qualified to operate the fuel truck. Nowhere in the record does the Organization or Claimant dispute the fact or content of the initial licensing information provided to Carrier by New Jersey authorities. Nor does the record reflect any challenge to the propriety of Carrier's removal of Claimant from the fuel truck driver position. Claimant immediately displaced back onto a bus driver position on July 12 and he continued to work in that capacity until July 19.

Apparently the initial information provided by New Jersey authorities was incorrect and Claimant's bus driver license was actually sufficient to permit him to legally operate the fuel truck. Claimant presented Carrier a statement to this effect from the New Jersey State Police on the morning of July 19 and he was immediately permitted to assume the truck driver position for that day and thereafter.

The dispute arose because some overtime was worked on July 18 by the junior employee, who was filling the truck driver position. The Organization contends Claimant was entitled to the overtime opportunity.

It is unrefuted in the record that Claimant had the statement from the State Police in his possession when he reported for work on the morning of July 18 and, for whatever reason, he did not provide it to the Carrier until the following day.

Carrier asserts, and it is similarly unchallenged in the record, that Claimant chose to "... lay behind the log ..." and make, in effect, a retroactive claim for an overtime opportunity worked by the junior truck driver. The Organization provides no explanation for Claimant's conduct in this regard. Carrier alleges, among other things, that Claimant made himself unavailable for the overtime assignment and cannot validly make a claim for the overtime compensation.

On this unique record, we must agree with the Carrier's position. Claimant was disqualified by Carrier and was informed he would remain so until he provided sufficient proof to the contrary. In the absence of a challenge or protest of some kind by the Organization, Carrier's action stands as a valid and proper course of conduct. This finding is consistent with Third Division Awards 28470 and 28471 involving these same parties. The decisions involve somewhat different facts, but nevertheless suggest that a

practice exists whereby an employee seeking to displace onto a position has the burden to demonstrate his entitlement to the job.

For reasons known only to Claimant, he chose not to identify himself as being a qualified and available truck driver until after the overtime opportunity was worked. Accordingly, we do not find the Carrier violated the Agreement.

A W A R D

Claim denied.

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.