

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29860
Docket No. MW-30055
93-3-91-3-459

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 Mr. J. Agnew, instead of Mr. M. Casas, to perform snow duty on February 3 and 4, 1990 (System Docket MW-1295).
- (2) As a consequence of the aforesaid violation, Claimant Casas shall be paid at his time and one-half rate for three (3) hours for February 3, 1990 and for four (4) hours for February 4, 1990."

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.

The question presented in this case is whether Carrier violated Rule 17 by assigning an employee junior to Claimant to perform snow duty on February 3 and 4, 1990.

Claimant is a trackman and has been assigned at Ashtabula, Ohio, for 15 years. At the time of this dispute, Claimant was a vehicle operator with workdays Monday through Friday, rest days Saturday and Sunday. Claimant's permanent residence is Cleveland, Ohio, which is approximately 60 miles from Ashtabula. Casas

maintains a room in Ashtabula throughout the week, and returns to his residence in Cleveland on weekends.

On Saturday, February 3, 1990, the Ashtabula area was "hit" with significant snowfall. The Carrier maintained that the heavy snow "restricted movement at the Ashtabula Yard, as well as approaches to the yard, creating an emergency situation."

Carrier contacted a junior employee "whose residence was approximately five (5) miles from the yard" to perform the "emergency" snow removal on an overtime basis. On Sunday February 4, 1990, additional snowfall "resulted in the need for emergency snow removal work." Carrier again contacted the junior employee to perform the snow removal on an overtime basis.

On February 12, 1990, the Organization submitted a claim on behalf of Claimant stating that, "Mr. Casas is senior to Mr. Agnew and was available for the overtime work. Supervisor Bost made no attempt to contact the Claimant." The Organization further argued that Claimant has worked at Ashtabula for at least fifteen years and has "never refused to report for duty regardless of weekend or work day overtime work."

Carrier denied the claim asserting that the junior employee "was called to perform emergency snow duty when Ashtabula Yard traffic required an immediate response." Carrier stated that, "Mr. Agnew resides only fifteen minutes away, while Claimant lives over an hour away."

Further correspondence failed to resolve the dispute which is now before this Board for adjudication.

The threshold issue for this Board to decide is if the weather conditions in Ashtabula, Ohio, on February 3 and 4, 1990, constituted an emergency situation with respect to the overtime snow removal duties in dispute. The Organization's argument that the weather conditions were not unusual nor should they have been unanticipated at that time of year is not unreasonable. On the other hand, if meteorological conditions on February 3, 1990, required an "immediate response", Carrier was within its rights to call the more accessible junior employee. From the evidence presented, the Organization has not effectively rebutted Carrier's assertion that unanticipated snow and ice conditions required an "emergency" response on February 3, 1990. However, the overtime snow removal performed on Sunday, February 4, 1990, is a different matter.

Carrier made some judgements with respect to the amount of time it would take the Claimant to get to work. On the basis of

those judgements, Carrier decided not to even try and call the senior employee for overtime on either of the dates at issue. In light of the weather conditions on February 3, 1990, however, Carrier should have anticipated and made contractually appropriate arrangements with respect to snow removal duties on February 4, 1990. The Claimant is clearly the senior of the two employees, and under the circumstances of Sunday, February 4, the Carrier should have called the Claimant and offered him the assignment as provided for in the Agreement. Therefore, Carrier is directed to make the Claimant whole for the overtime hours he should have worked on Sunday, February 4, 1990.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.