

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30453  
Docket No. MW-30157  
94-3-91-3-587

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy 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 J.R. Smith instead of Mr. R.T. Hollen to perform overtime service piloting the ditching train on the South Fork Secondary on Saturday, July 14, 1990 (System Docket MW-1405).
- (2) As a consequence of the aforesaid violation, Mr. R.T. Hollen shall be allowed four and one-half (4.5) hours' 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 employe and 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.

Claimant was a Track Foreman assigned to Gang No. 1181 on the Pittsburgh Line, headquartered at Altoona, Pennsylvania, with a tour of duty of 7:00 AM to 3:30 PM, rest days of Saturday, and Sunday, and with a seniority date of April 3, 1970. J.R. Smith, with a seniority date of September 29, 1975, worked as Inspector and Repair (I&R) Foreman on the South Fork Secondary, with the same tour of duty and rest days. During the workweek of July 9 through 13, 1990, both Gangs were assigned in the Altoona, Pennsylvania area.

During the week of the July 9, 1990, the Carrier assigned a ditching train to maintain its right-of-way on the South Fork Secondary. Foreman Smith was assigned to "pilot" the ditching train during his regular workweek. On Saturday, July 14, 1990, Foreman Smith was called to work 4 1/2 hours overtime piloting the same ditching train.

The Carrier contends that Foreman Smith was properly utilized to pilot the ditching train on Saturday because he works this section of the subdivision during his normal tour and had been performing these piloting tasks previously during his regular workweek.

The Organization contends that the Carrier violated Rule 17 when it failed to call the Claimant, who is also a qualified Foreman and senior to Foreman Smith, to perform the overtime in question:

Rule 17 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."

Both the Claimant and Mr. Smith are qualified Foremen on the Allegheny "A" Seniority District, which includes the South Fork Secondary. They both performed a variety of duties as Foremen, and it is undisputed that the Claimant was the senior track Foreman as between himself and Mr. Smith. The work involved is the kind that the Claimant might ordinarily and customarily perform during the course of a normal workweek.

After reviewing the entire record, we conclude that the Organization has established a prima facie case that Claimant's seniority entitled him to the work, and that the Carrier's defense that Mr. Smith had performed similar work during the preceding week is insufficient to negate the operation of Rule 17.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois this 13th day of September 1994.