

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30777  
Docket No. MW-30747  
95-3-92-3-544

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Monongahela Railway Company

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

(1) The Agreement was violated when, on May 30, 1991, the Carrier used junior employe S. Glotfelty, instead of assigning Mr. L. Liberatore, to perform trackman's duties (repair broken rails) at South Brownsville Yard.

(2) As a consequence of the aforesaid violation, Mr. L. Liberatore shall be allowed three (3) hours' pay at his overtime rate of pay and to be made whole."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 and S. R. Glotfelty are Work Equipment Operators and Trackmen assigned to different gangs at South Brownsville Yard. Claimant is senior to Glotfelty.

On May 30, 1991, the Carrier assigned the junior employee over Claimant to perform rail repair work during overtime hours even though Rule 4-E-2 states that "... employees ... will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in the order of their seniority." The rail repair was on the territory assigned to the gang that Glotfelty was a part of.

The Carrier asserts that the work assignment to the junior employee was emergency work following and continuous with his regularly assigned tour of duty. Specifically, a broken rail was discovered in the area where Glotfelty's gang was working. The Carrier asserts that the broken rail was "a minor emergency" and that Claimant, due to other assignment, was not available at the onset of the repair work.

On the property, the Organization did not refute the Carrier's assertion that an emergency existed justifying the assignment of the work to the junior employee. Given the uncontested nature of the record on this point, we must therefore find that an emergency existed allowing assignment of the work to the junior employee based on his immediate availability. The claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.