

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31046
Docket No. MW-30745
95-3-92-3-542

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
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when, on October 26, 1990, the Carrier permitted Track Foreman W. Miller, instead of assigning Class 1 Machine Operator J. Bowman, to perform overtime service of operating a backhoe at Mile Post 74.8 on No. 2 Track (System Docket MW-1992).
- (2) As a consequence of the aforesaid violation, Class 1 Machine Operator J. Bowman shall be allowed eight (8) hours' pay at his applicable time and one-half rate of pay and five (5) hours' pay at his applicable double time rate of pay."

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.

At the relevant time, Claimant held the position of Class 2 Machine Operator of a backhoe on a track force headquartered at Salem, Ohio.

On October 26, 1990 at approximately 2:30 P.M., a helper unit on the Fort Wayne Line reported a collapsed culvert underneath the No. 2 track at MP 74.8. After inspection, Supervisor V. Rich called headquarters at Salem at approximately 3:20 P.M. and instructions were given to hold the employees until a decision was made regarding overtime for the repairs. The employees were so informed. The final decision to work overtime was conveyed at approximately 3:35 P.M. Foreman W. Miller rather than Claimant operated a backhoe to perform the overtime work.

The claim must be denied. On the property, the Carrier asserted that Claimant elected to leave before he was released. That assertion has not been refuted on the property. Therefore, this record demonstrates that Claimant was informed of the possibility of overtime and elected to leave before the final decision concerning overtime was made. Claimant therefore cannot assert that he was improperly denied the work.

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 1st day of September 1995.