

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31306
Docket No. MW-30978
95-3-92-3-886

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

- (1) The Agreement was violated when, on May 31 and June 1, 1991, the Carrier assigned junior Foreman L. Kubiak to perform overtime service (machinery protection/piloting work) on the Monongahela Secondary and Pittsburgh Main Line instead of calling and assigning Foreman P.T. Dominic, on either date, who is assigned and responsible to perform such machinery protection/piloting work on a daily basis (System Docket MW-2178).
- (2) As a consequence of the violation referred to in Part (1) above, Foreman P.T. Dominic shall be allowed twelve (12) hours' pay at his time and one-half rate for the work performed on May 31, 1991, sixteen (16) hours' pay at his time and one-half rate and two (2) hours' pay at his double time rate for the work performed on June 1, 1991."

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.

This claim arose in connection with a derailment May 31, 1991, at Manor, Pennsylvania, on Carrier's Pittsburgh Main Line. Following the derailment, Carrier called a foreman junior to Claimant to pilot the track stabilizer assigned to Claimant's gang on the derailment site. That employee piloted the stabilizer in question on May 31, 1991, and June 1, 1991.

By letter of June 28, 1991 the Organization filed a claim alleging Carrier had violated Rules 17 (Preference for Overtime Work) and 4 (Seniority) of the Conrail-BMWE Agreement, and requesting 12 hours' overtime payment for May 31 and 16 hours' overtime plus 2 hours' double time payment for June 1, 1991.¹ Carrier denied the claim by letter of August 23, 1991. It was subsequently progressed in the usual manner. Rule 17 reads in pertinent part as follows:

"Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily performed by them during the course of their work week or day in the order of their seniority."

It is the position of the Organization that, since Claimant was the senior employee in this instance, he should have been called to perform the piloting work on May 31, 1991. Claimant had operated such machinery before, and was clearly qualified to do so. Moreover, Claimant was not significantly farther from the site of the derailment than was the junior employee actually called.

The Carrier maintains that an emergency situation existed as a consequence of the derailment. Accordingly, it was within its rights to call the nearest available qualified employee to perform the work at issue.

Since the Parties have already settled the matter of payment for June 1, 1991, that issue is not before this Board. Nor is it disputed on this record that an emergency existed on May 31, 1991, following the derailment. Under the circumstances, it was not unreasonable for Carrier to contact the employee closest to the location of the track stabilizer machine on the day of the derailment.

¹ It is unrefuted on this record that Carrier settled the claim for payment for June 1, 1991, prior to submission of this matter to the Board.

Although the Organization has protested that the difference in distance between Claimant's residence and the junior employee's residence is insignificant the record before this Board indicates otherwise. Claimant resided 55 miles away from the site, with no direct access route, while the junior employee resided 30 miles away near a major highway. In light of the foregoing, this Board does not find that Carrier violated the Agreement when it called the nearer, but junior, employee to perform the work in question on May 31, 1991. (See also Third Division Awards 26482, 25301, and 24271).

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 19th day of January 1996.