

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31357
Docket No. MW-30587
96-3-92-3-353

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 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 the Carrier assigned junior employe J. R. Betteridge to replace skid shoes on the BR 550 Ballast Regulator at Jessie Stewart, Mile Post 5, on the Monongahela Secondary on June 8, 1990 (System Docket MW-1561).
- (2) As a consequence of the violation referred to in Part (1) above, Class II Operator J. R. Cottrell shall be allowed ten (10) hours' pay at the applicable Class II Operator's rate."

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.

With respect to the facts, in this claim the Organization asserts that on June 8, 1990, the Carrier improperly assigned junior employee J. R. Betteridge rather than Claimant to perform overtime work on Claimant's regularly assigned Class II BR 550 Ballast Regulator. At the time, Betteridge was regularly assigned to a Class I Torsion Beam Tamper.

In an undated statement, Betteridge states the following:

"I, J. R. Betteridge, was called out on overtime, by Repairman Maldonvan, to work on BR 5001 Ballast Regulator. We worked all day replacing plow shoes.

Originally J. R. Cottrell was scheduled to work, & they cancelled it off. Then they said it was on again & never called him. Supervisor was Bob Benner. Work was done at M.P. 5, Jesse Stewart Siding, Mon Line."

The Carrier asserts that Betteridge's statement is inaccurate in that on the date in question Betteridge was assigned to work on his assigned Torsion Beam Tamper, and that he spent approximately 30 minutes assisting the repairman replacing the plow shoes on the BR-550 Ballast Regulator.

With respect to the relevant rules, the Organization claims a violation of Rule 17:

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."

The Carrier argues that Betteridge's performance of approximately 30 minutes of maintenance work on the Ballast Regulator was permissible under Rule 19:

"RULE 19 - ASSIGNMENT TO HIGHER OR LOWER RATED POSITIONS

An employee may be temporarily assigned to different classes of work within the range of his ability. ...

* * *

The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement."

As argued in its Submission the factual premise of the Organization's claim which seeks 10 hours' pay for Claimant is that on June 8, 1990, junior employee Betteridge rather than Claimant, "consumed ten (10) hours while performing the subject overtime service" The Carrier disputes that Betteridge performed that amount of work, asserting that the work lasted only 30 minutes. Because this is a contract dispute, the Organization has the burden to establish all the elements of its claim. We do not find that the Organization has met that burden.

The direct facts supporting the Organization's claim come from Betteridge's undated statement. As set forth above, in that statement Betteridge asserts that "We worked all day replacing plow shoes." However, Betteridge's statement does not indicate on what date he performed that work. This Board cannot determine if Betteridge did that work on June 8, 1990, or on some other date. Moreover, in his statement, Betteridge asserts that he performed the work on "BR 5001 Ballast Regulator". Claimant's machine, however, was the BR 550 Ballast Regulator and not the "BR 5001 Ballast Regulator". Thus, this Board cannot determine if Betteridge performed the work on Claimant's machine or on some other machine.

Therefore, this Board cannot satisfactorily determine whether Betteridge performed the work on the date set forth in the claim and/or if he performed that work on Claimant's machine. Given the disputes that exist, we are unable to conclude that the Organization carried its burden to show that on June 8, 1990 Betteridge performed the amount of work the Organization argues that he did and further that, as the Organization argues, Betteridge did so on Claimant's machine. Perhaps these are minor omissions or merely typographical errors. But, the Organization's argument is premised upon a set of facts which a reading of the record forces this Board to speculate and make assumptions in order to find those facts existing. Under the circumstances of this case, we are unwilling to do so.

We express no opinion on whether Betteridge's performance of the type of maintenance work on Claimant's machine involved in this case for 30 minutes violated any rule. That was not the factual premise of the Organization's position on the property. The Organization's position on the property was "... that work was not completed in 30 minutes as the carrier states" but, in accord with Betteridge's statement "We worked all day replacing plow shoes" and as stated in the Organization's Submission Betteridge "... consumed ten (10) hours while performing the subject overtime service"

Under the circumstances, the claim will be denied for failure to satisfactorily establish the basic facts.

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 29th day of February 1996.