

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31379
Docket No. MW-31782
96-3-94-3-42

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks 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 the Carrier assigned junior employees R. Fogel and R. Behler, instead of calling and assigning senior employee F. Swarrow, to perform overtime service on May 30 and 31, 1992 (System Docket MW-2772).
- (2) As a consequence of the violation referred to in Part(1) above, Claimant F. Swarrow shall be compensated at the Class 2 Machine Operator's rate for twenty-nine(29) hours at the time and one-half rate and eight(8) hours at the double time 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.

As evident from the Statement of Claim, the contention of the Organization is that Carrier violated Rule 17 of the Agreement when it failed to call the senior qualified employee to perform overtime work on Saturday, May 30, and Sunday, May 31, 1992.

Rule 17 reads as follows:

"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." (underscoring added).

All the employees (Claimant and the two who worked) are qualified to operate the ballast machine. All three were operating a ballast machine on the work day prior to the claim dates in so far as this Board knows.

The Carrier's sole argument on the property is that both junior Employees who were utilized on an overtime basis on the claim dates were part of a DATS force and that Carrier used the ballast machine assigned to the DATS force to clean up a derailment.

There has been no challenge to the hours claimed, the rates claimed, nor has there been any clarification as to claimant's availability for the work nor is there any indication that Carrier used the entire DATS force to clean up the derailment or whether they simply utilized a ballast machine assigned to the DATS force.

Under the circumstances, this Board finds that all three employees were qualified, that no one worked clearing a derailment in the regular work day of their assignment prior to the rest days. The Carrier should have assigned the work in accordance with seniority. The underscored portion of Rule 17 has impact only in so far as that portion reading "*** in the order of their seniority ***".

AWARD

Claim sustained.

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ORDER

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 29th day of February 1996.