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'orm 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31474
Docket No. SG-31845
96-3-94-3-151

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & Northwestern Transportation Co. (CNW):

Claim on behalf of L. B. Frank for payment of 301 hours at the time and one half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 15(d), when it used junior employees to perform overtime service at JN Interlocking Plant on various dates during September and October of 1992, and deprived the Claimant of the opportunity to perform the work." Carrier's File No. 79-93-16. General Chairman's File No. S-AV-147. BRS File Case No. 9282-CNW.

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.

The Organization's claim is that under Rule 15(d) overtime service is to be assigned to the "senior qualified" employee requesting such opportunity. The Organization argues herein that the Claimant was qualified, the senior employee and the Carrier's denial of his request for overtime violated the Rule.

The Carrier argues that the Claimant was not qualified for the overtime assignment. Among other arguments, Hours of Service requirements and procedural errors, the Carrier maintains that the Claimant could not run the microprocessor-based interlocking at the times when overtime was assigned, but was permitted after he attained appropriate qualifications. The claim was denied as the Carrier did not violate Rule 15(d).

As background, the Carrier initiated a cut over of a microprocessor in the last week of July 1992 at the JN Interlocking Plant which proved unsuccessful. Therefore, in order to operate the plant, the Carrier assigned employees off their regular assignments from No. 2 and No. 3 Crews to cover the overtime. There is no dispute in this record that the Claimant was not a member of the project when it began or any dispute that it was offered and refused by the Crew Foreman at the time. The record indicates that the Claimant displaced the Crew Foreman of Crew No. 3 five weeks after the overtime began and requested the overtime. The dispute centers upon an application of Rule 15(d) which states in part:

> "When overtime service is required of a part of a group of employees who work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire."

On the whole of this record, the Organization failed to provide sufficient probative evidence to prove its claim. Arguments of an improper denial are not in the claim before this Board and are precluded from our consideration (Third Division Awards 19790, 28529 and Fourth Division Award 4867). On merits, this Board finds that the Carrier argued in its letter dated December 29, 1993 that the Claimant "was not involved in the class of work" as contemplated by the Rule, supra. The Organization does not rebut that assertion which stands as fact. Additionally, there is a lack of evidence to prove the Claimant qualified for the overtime. Carrier maintains that he was unqualified until put into rotation effective October 14, 1992 and prior thereto performed construction work with the remainder of the split crew at the Vail Interlocking Plant. Substantial rebuttal evidence is lacking. Accordingly, the claim is denied for lack of proof.

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 25th day of April 1996.