

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31673  
Docket No. MW-31236  
96-3-93-3-227**

**The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(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 M.S. Lego, instead of calling and assigning senior employe R.K. Rupert, to perform overtime service on August 16, 1991 (System Docket MW-2405).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R.K. Rupert shall be allowed ten (10) hours' pay at the vehicle operator's time and one-half rate and (1) day's credit toward vacation and all other benefits."**

**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.**

Claimant was regularly assigned as a Fuel Truck Operator. On August 16, 1991, the Carrier needed to move a diesel generator and used a junior vehicle operator, who was assigned a log truck, to move the generator. The claim date was a rest day for both employees.

The Organization filed this claim alleging a violation of Rule 17, which states:

**"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 the Claimant could not have hauled the diesel generator because the fuel truck is not licensed or equipped to haul a trailer. It further argues that the vehicle operated by the junior employees customarily pulled trailers and was equipped and licensed to do so.

The Organization has the burden to prove the Agreement was violated. It has not refuted the Carrier's arguments. Its basic position is that the Carrier should have provided a different vehicle for the claimant. However, the record is void of any evidence of the history or practice on the property where trucks were switched so a senior employee could work overtime. A mere citing of a rule does not meet its burden. The Agreement was not violated.

**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 August 1996.