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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31704
Docket No. MW-30290
96-3-92-3-3**

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

**(Brother 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 employees M. Carney and W. Bowen to perform overtime work (replacing ballast, tamping ties), between Mile Posts 51 and 54 on the Fort Wayne-Pittsburgh Main Line, Salem, Ohio Subdivision on, July 15, 1990 (System Docket MW-1557.
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Banks and B. Byrne shall each be allowed eleven (11) hours' pay at their respective time and one-half rates."

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.

On July 15, 1990, it was necessary for the Carrier to call additional forces to repair a washout between Mile Posts 51 and 54 on the Salem, Ohio, Subdivision of the Fort Wayne - Pittsburgh, main line. The Carrier states Supervisor V. T. Rich attempted to telephone Claimant Banks for this work at his residence at 6:00 AM, but received no answer. The Carrier did not attempt to call Claimant Byrne. Two employees junior to the Claimants were called and performed service.

This claim presents two distinct issues. The Carrier does not deny it had an obligation to call Claimant Banks for service, but submits it satisfied that obligation. It denies, however, that it was required to call Claimant Byrne.

With regard to Claimant Banks, the Organization insists the Carrier did not make sufficient effort to contact him. It first questions whether a call was made and submits a statement from the Claimant's wife attesting that they were home at the time and nobody called. Even if the supervisor called the correct number, the Organization asserts he had an obligation to make more than one attempt to contact the Claimant. We agree with the Organization. There is certainly the possibility that the supervisor might have misdialed or got the wrong number. He did not indicate what number he called or how long he let the phone ring. This Division has, on many occasions, held that a reasonable attempt to reach an employee requires more than a single call. See, for example, Third Division Awards 26562, 27973, and 28796. We will, therefore, sustain the claim on his behalf.

The Carrier notes that Claimant Byrne is regularly assigned as a welder helper in the Division Welding Gang. It asserts he does not perform basic subdivision maintenance on a regular basis. Welder helper Bowen, who is junior to Claimant Byrne, is assigned to the Salem Subdivision, and performs general maintenance in this territory on a regular basis. The Carrier further argues the work of repairing a track washout is general subdivision track maintenance work. For this reason, the Carrier argues Bowen was the proper employee to call for overtime pursuant to Rule 17 - Preference for Overtime Work, which 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."

The Organization, also citing Rule 17, argues Claimant Bryne should have been called because he was senior to Bowen as a Welder Helper, and they are both headquartered on the Salem Subdivision. It avers the Agreement makes no distinction between a Welder Helper who performs general subdivision maintenance and one who performs division work or whose normal duties are limited to welding work. The Organization also states the overtime work was distinct and separate from any regular Welder Helper assignment.

Our reading of Rule 17 dictates that this claim be resolved by answering the simple question, "If the washout occurred during regular work hours, which employee would normally perform the repair work?" Based upon the facts presented, it is evident the work would be performed by Bowen. As this work then is the work he would ordinarily and customarily perform during his work week or day, he was the appropriate employee to call for the overtime service in accordance with Rule 17. With respect to Claimant Byrne, the Agreement was not violated, and the claim on his behalf must be denied.

AWARD

Claim sustained in accordance with the Findings.

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 August 1996.