

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31929
Docket No. MW-31506
97-3-93-3-514**

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE:
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior Vehicle Operator L. P. Krankowski, instead of Vehicle Operator B. E. Null, to perform overtime service operating a log loader to pick up debris and scrap in the Enola and Harrisburg Yards on March 14, 1992 (System Docket MW-2604).
- (2) As a consequence of the aforesaid violation, Claimant B. E. Null shall be '... compensated for the overtime hours that was made by the Jr. employee, at the overtime rate of time and one-half, at the applicable rate for a Vehicle Operator.'"

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 were given due notice of hearing thereon.

The pertinent facts are not in dispute. Indeed, Carrier did not challenge any of the Organization's assertions made in the claim or subsequent correspondence while the matter was being handled on the property.

Claimant's regular position was that of Vehicle Operator assigned to operate a log truck. He was headquartered at Enola, Pennsylvania. Log truck operation is work Claimant normally does during the course of his workweek. Using a log truck to pick up debris and scrap on the subdivision is work Claimant had done in the past and continued to do. Claimant was home and available to work the overtime on the claim date.

The junior employee, also a Vehicle Operator, was regularly assigned to operate a tractor-trailer. Carrier's sole basis for assigning the overtime to him is because the junior employee was temporarily assigned to operate a log loader borrowed from the B&B Department to perform clean-up work in the Yard for the entire week of March 9, 1992. The disputed overtime assignment was a continuation of that specific clean-up work using the same specific piece of equipment.

According to this record, the terms log truck and log loader refer to the same kind of equipment because it was undisputed that the vehicles were "... identical in every respect and capable of performing the same duties, ..."

The Agreement provision in controversy reads as follows:

" 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 parties cited numerous prior Awards dealing with the application of Rule 17. After reviewing them, we find that only one deals with the work specific and machine specific considerations involved in this dispute. In Third Division Award 30453, the

Board found that the work of piloting a ditching train was the kind of work that the claimant might ordinarily and customarily perform during the course of a normal workweek. The Board went on to determine that the performance of the same specific work with the same specific equipment by a junior employee during the preceding week was insufficient to negate the operation of Rule 17. The claim was sustained.

We find that logic to be sound. On this record, Rule 17 is not found to establish work specific and/or machine specific qualifiers to its application. Since Claimant ordinarily and customarily performed the kind of work in dispute, he should have been given preference for the overtime assignment.

The remaining issue deals with the proper compensation. As noted previously, the on-property record reveals that Carrier took no exception to the claim for the punitive rate. While the Carrier attempted to raise the issue for the first time in its Submission, the Organization objected. It is well settled that this Board will not consider information and argument that was not part of the parties' handling of the matter on the property. Accordingly, the claim will be allowed as written.

AWARD

Claim sustained.

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 4th day of March 1997.