

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32329
Docket No. MW-31983
97-3-94-3-337**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Agreement was violated when the Carrier improperly changed the headquarters point of Messrs. L. A. Kurtz, M. A. Metz, R. J. Icks and L. L. Claar away from their assigned camp cars headquartered on the Allegheny 'A' Division to a location on the Allegheny 'B' Division which resulted in their being deprived of the opportunity to perform overtime service on August 31, September 1, 8, 9, 10, 14, 15, 21, 22, 24, 29 and 30, 1992 (System Docket MW-2808).**
- (2) As a consequence of the violations referred to in Part (1) above, Mr. L. A. Kurtz shall be allowed four and one-half (4.5) hours' pay at his time and one-half rate, Mr. M. A. Metz shall be allowed twelve (12) hours' pay at his time and one-half rate, Mr. R. J. Icks shall be allowed nineteen and one-half (19.50 hours' pay at his time and one-half rate and Mr. L. L. Claar shall be allowed twelve and one-half (12.5) hours' pay at his time and one-half 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 were given due notice of hearing thereon.

Claimants hold seniority in the Track Department in the following positions: Kurtz - VO Boom Truck Operator; Metz - MO1 Torsion Beam Operator; Icks - MO2 Ballast Regulator Operator; Claar - MO2 Bulldozer Operator. At the time of the instant dispute, Claimants were awarded these bulletined positions on Undercutter Gang UC-B headquartered in camp cars in Lock Haven, Pennsylvania and operating in the Harrisburg zone on territory spanning the Allegheny A, B and Harrisburg Seniority Districts.

On August 31, 1992, Carrier decided to split the gang and sent Claimants to work in other than their bulletined positions on a daily basis through September 30, 1992. During that time period, Carrier assigned junior employees to work both the regular and overtime hours attributable to Claimants' bid positions. This claim seeks pay for each Claimant at the overtime rate for the amount of overtime worked by junior employees on their bulletined positions during this period.

The Organization contends that Carrier violated Rules 3, 11 and 17 of the Agreement by failing to award Claimants' the overtime worked by junior employees in their bulletined positions. Rule 17, Preference for Overtime Work, 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 asserts that Carrier never disputed on the property that overtime was assigned to the equipment identified in Claimants' bids nor that it was worked by junior employees assigned to the equipment while Claimants were working the split gang. The Organization argues that the Board has consistently held that

overtime accrues to a position, citing Third Division Awards 6627, 23073 and 28500, and that overtime worked in Claimants' assigned positions accrues to Claimants. It relies upon on property Third Division Awards 26403, 26404, 26405, 26427, 26431 and 29505 as supporting its claim.

Carrier contends that split gangs have been a past practice on this property, citing Third Division Award 31501. It asserts that Claimants continued working their gang assignments after the split and were paid for that work. Carrier argues that under Rule 17, the overtime in issue was properly performed by those employees who had been doing the work at that location, relying upon Third Division Awards 29435, 31350, 31365, 31302, 31664 and 31673. Carrier avers that the Organization failed to prove what work was actually performed, and notes that even if other employees did Claimants' work, paragraph 4 of the Scope rule permits it.

A complete review of the record reveals that Carrier never denied on the property that overtime work was performed by junior employees on the equipment identified as Claimants' bulletined positions on the UC-B gang. Further, the Memorandum dated February 26, 1993, attached to Carrier's submission, relating to a new procedure for giving senior employees their preference of work locations when a gang is to be split, was not presented during the processing of this claim on the property, and cannot be considered by this Board as evidence of the past practice asserted by Carrier.

Carrier failed to show that Claimants' were, in fact, working in their bulletined positions when it split the gang and moved them to the Allegheny B Division. Rather, the record reflects that Claimants' were moved, without option, from their bid equipment when the gang was split. Even assuming that Carrier has the right to split the gang, and that it has done so in the past, this Board has held that Rule 17 clearly provides that overtime accrues by order of seniority to the employee who "ordinarily and customarily" performs the work in question. See Third Division Award 31302. Contrary to the awards cited by Carrier, in the instant case, Claimants' ordinarily and customarily performed the work on their bid equipment, which was the subject of overtime. Carrier's removing them from that equipment to assign them elsewhere cannot make them "unavailable" to perform the work of their bulletined positions under the terms of Rule 17. While there is some efficacy in Carrier assigning the employee performing the work assignment during the shift to the overtime required, under the circumstances of this case such practice cannot defeat the claim.

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 13th day of November 1997.