

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32396
Docket No. MW-30781
97-3-92-3-590**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Machine Operator Jerry West, instead of senior Machine Operator Roger Glenn, to perform planned overtime service at Madison, Illinois on April 23, 24, 25, 26, 28, 29, 30, May 3, 9 and 10, 1991 (System File 1991-4/013-293-15).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Roger Glenn shall be allowed thirty-eight and one-half (38 1/2) hours' pay at his time and one-half rate of pay.”**

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 basic facts are not in dispute. The Claimant was the senior employee and on the dates of claim, a junior employee was performing service as a Tamper Machine Operator. Both employees had attended tamper training school and needed further training with a regular Tamper Operator. The junior employee began training on the tamper at a time when no overtime was involved. The senior employee (Claimant) was working a regular assignment as Large Machine Operator. Beginning on April 23, 1991 overtime accrued with the tamping operation which was assigned to the junior employee. The junior employee continued to receive payment of overtime. A grievance was filed June 18, 1991.

The Organization alleges that the Carrier violated seniority and overtime Rules when the junior employee was assigned to work the tamper machine. It argues that the Carrier was aware that the job would require more than one day of overtime and ignored seniority in its assignment. The Organization submitted letters from the employees to support the position that the Carrier ignored the Agreement.

The Carrier argues that after training school the two employees agreed among themselves that the junior employee would be the first to begin further training with the regular Tamper Operator. As such, the junior employee was assigned when the overtime began. Under Rule 31(g), the overtime accrues and is performed by the employee "... working on the job...." As the junior employee was the assigned trainee on the job, the overtime was correctly performed as a continuing part of his duties. The Carrier argues it was not obligated to switch out the employees at the end of the day. Even further, the Carrier maintains that the Organization "laid behind the log" for two months allowing the junior employee to work the position and then sprang forth with a claim when it was too late to change. It denies the claim alleging that the Claimant worked his full time position by choice, which the Carrier in a good will gesture permitted.

The Board reaches its conclusion based upon the Rules and record of evidence. The record includes statements from both employees. The Claimant states that:

"My supravisor (sic) said he needed a backhoe operator & he took me off the tamper. Nothing was said about who wanted to go. The next day I was on the backhoe."

The Claimant also states that he "told the Company that I was available to run the tamper, so it wasn't a case of refusing to do so." The Carrier argues that the written statement is self serving, but it is the evidence of record. The Carrier has offered no contrary proof. Here, the Claimant was the senior employee and pulled off the tamper to work the back hoe. In this instance, the Carrier assigned the junior employee to the tamper and overtime accrued for ten days, many in sequence. The Organization argues that the Claimant filed the claim when he got upset that he was not being returned to operate the tamper. Whatever the reason, the facts stand unrefuted that the Claimant had seniority and lost pay.

The Board notes that the date of claim is within the Rule of the Agreement. The Organization denies it laid behind the log, maintaining instead that the Carrier was aware that the tamper job would involve overtime and pulled the Claimant to work the back hoe instead. The facts are that it was the Carrier's decision as to which employee worked the tamper and thereby accrued overtime. We note that the seniority Rule assigns such work to the senior employee. The Claimant was the senior employee. Unlike prior Award support where the Carrier made efforts to assign the senior employee to the overtime assignment (Third Division Award 30078), there is no such evidence here. The Organization denies that the employees reached any agreement as to who would train first. There is proof that the Claimant did not work the assignment which resulted in loss of pay. Accordingly, the Board finds that the Agreement was violated and the facts sustain 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 30th day of December 1997.