

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32450  
Docket No. MW-31717  
98-3-93-3-766**

**The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Carrier violated the Agreement when it failed to call Foreman W. Miller and Vehicle Operator M. Carney to perform overtime service repairing a sun kink on their assigned territory at Mile Post 60.8 on May 21, 1992 and instead called and used Salem, Ohio gang forces (System Docket MW-2734).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman W. Miller and Vehicle Operator M. Carney shall each be allowed five and one-half (5.5) hours' pay at their applicable 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.

On May 21, 1992, the Carrier required overtime service to repair a sun kink on the Claimants' assigned territory. There is no dispute that the Claimants were the appropriate employees to whom to assign this work.

According to the Carrier, the occurrence took place prior to the end of the Claimants' workday. The Carrier asserts that calls were made to the Claimants on two radio channels and by telephone to the Claimants' headquarters and that the Claimants could not be contacted thereby.

The Claimants state that they received no such calls, although they did hear a radio call to Welders for the same occurrence. Since employees from a different location were called in their place, the Organization seeks pay for lost overtime work by the Claimants.

This is not a case of whether or not the Carrier made sufficient effort to call off-duty employees or a question of whether the employees were available. Rather, the dispute concerns communication to on-duty employees. The record does not provide indisputable evidence as to attempts to reach the Claimants; if calls were made, whether the Claimants in fact heard the calls; or whether their location at the time interfered with the ability to hear the calls. No reason was suggested, however, why available on-duty employees would not have been assigned in preference to seeking out employees from another location. On this basis, the Board can make no reasoned judgment as to the facts.

### **AWARD**

**Claim dismissed.**

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**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 21st day of January 1998.**