

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33212  
Docket No. MW-32560  
99-3-95-3-479

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

(Brotherhood of Maintenance of Way Employes  
**PARTIES TO DISPUTE:** (  
(The Atchison, Topeka and Santa Fe Railway Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior Foreman T. Williams to perform overtime service in the Kansas City Yards on July 20, 21, 22, 26 and 27, 1993, instead of assigning Foreman J. T. Hess who was the senior foreman, available, qualified and willing to perform such service (System File 30-33-9337/930110713).
- (2) As a consequence of the violation referred to in Part (1) above, Foreman J. T. Hess shall be compensated at the Group 3, Class 1 Foreman's time and one-half rate for all hours worked by Mr. T. Williams on the dates in question.”

**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 issue in this dispute is whether the Carrier violated the Agreement when it called a Foreman junior to Claimant to perform overtime work consisting of continuous watch of the rising water of Kaw River.

The burden of proving that a violation occurred rests upon the Organization. The Carrier does not dispute that Claimant had the right to be called for the overtime work ahead of the junior employee. The Carrier's position is that it called Claimant for the work on various occasions and Claimant did not respond. The Organization contended that Carrier failed to prove this affirmative defense.

The Organization contends that the Claimant was routinely available for overtime service both before and immediately after the claim period. The Carrier disagrees, stating that at a meeting of employees on July 20, 1993, the Foreman asked whether any employees wished to work overtime. The Organization asserts Claimant was not at this meeting and furnished the statements of some of Claimant's fellow employees that Claimant usually ate lunch at locations other than the location where the offer of overtime was made. None of the co-employee statements actually states that Claimant was not at the July 20, 1993 meeting. They merely state that the Claimant usually ate lunch elsewhere.

Carrier submitted statements from an officer of Carrier and two of Claimant's fellow employees that Claimant was present at the July 20, 1993 meeting. The Organization failed to prove that the Claimant was not at the July 20, 1993 meeting. It is undisputed that he did not volunteer for overtime work.

Therefore it is not necessary to resolve the factual dispute of whether the Carrier did or did not call and page the Claimant on July 19, 1993 or whether one call and one page was sufficient. The claim is for overtime on July 20, 21, 22, 26 and 27, 1993. There is no claim for overtime for July 19, 1993. Claimant had the opportunity to volunteer for overtime on the July 20, 1993 but did not do so.

**AWARD**

Claim denied.

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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 April 1999.