

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33437
Docket No. MW-32393
99-3-95-3-249**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 assigned Vehicle Operators S. S. Smiley and T. L. Johnson to perform overtime service at Mingo Junction, Ohio on September 18 and 19, 1993, instead of calling and assigning Vehicle Operators B. R. Pope and W. L. Russell to perform said work (System Docket MW-3325).

(2) As a consequence of the violation referred to in Part (1) above, Vehicle Operator B. R. Pope shall be allowed twenty-eight (28) hours, pay at his time and onehalf rate and Vehicle Operator W. L. Russell shall be allowed twenty-two (22) hours, pay at his time and one half overtime 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.

By letter dated October 18, 1993, the Vice Chairman-BMWE submitted a claim to the Division Engineer-Pittsburgh Division which requesting that Claimant Pope be compensated for all time earned by Mr. Smiley and that Claimant Russell receive the earnings of Mr. Johnson for the dates of September 18 and 19, 1993. On the dates of the claim, September 18 and 19, 1993, Claimants B. R. Pope and W. L Russell held Vehicle Operator positions headquartered at Mingo Junction, Ohio. The Organization contends that the Claimants should have been used for overtime on the disputed dates instead of assigning the work to S. S. Smiley (assigned a Vehicle Operator's position at Pitcarin Yard) and T. L. Johnson (a Vehicle Operator assigned to work with the Division Safety Compliance gang). The overtime work in question consisted of hauling material from Mingo Junction to Pitcarin Yard.

Rule 17 provides a preferential right to overtime to the employee or employees who normally perform such work during their normal workweek or day:

"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 Organization's contention that the Claimants should have been used for the overtime because the disputed work occurred on their subdivision must yield to the preferential rights conferred upon Vehicle Operators S. S. Smiley and T. L. Johnson by the express language of Rule 17, supra. See Third Division Awards 29435, 29551, 31263, 31365, 31924 and 32293. Carrier made a persuasive showing that Mr. Smiley and Mr. Johnson were used for the overtime because they had been ordinarily and customarily performing the work of hauling M&W material to and from the Pitcarin Bulk Material Yard during the course of the workweek.

Previous Awards by the Board have upheld the Carrier's position that Rule 17 provides a "superior entitlement" for overtime which goes to the employee or employees that normally and customarily do the work, even if a more senior employee is available. However, in the instant case it is also noted that the Claimants were junior to Mr. Smiley and Mr. Johnson in their respective positions, i.e., Mr. Smiley is senior to Mr.

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Pope as a Vehicle Operator and Mr. Johnson is senior to Mr. Russell as a Vehicle Operator.

AWARD

Claim denied.

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 23rd day of August 1999.