

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33641
Docket No. MW-32598
99-3-95-3-527**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned junior employes to perform track work, i.e., rubbing out spikes and distributing tie plates and pandrol clips, in the vicinity of Mile Post 50.6 at Paintsville, Kentucky on Friday, October 7, 1994, instead of assigning the Claimants who were senior and available to perform such work [System File 21(38) (94)/12(94-940) CSX].

(2) As a consequence of the violation referred to in Part (1) above, Claimants R. D. Claiborne, E. L. Siler, K. R. Marple and J. C. Stephens shall each be allowed eight (8) hours' pay at the applicable overtime rates."

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.

In October 1994, the Claimants were assigned to System Production Gang 5XC5. The gang was assigned to work Monday through Thursday ten hours each day. Friday, Saturday and Sunday were rest days for the gang.

On October 6, 1994, System Production Gang 5XC5 was working in Paintsville, Kentucky. Three of the Claimants reside in Tennessee and one resides in Kentucky, a considerable distance from Paintsville.

Four members of System Production Gang 5XC5 worked overtime in Paintsville on Thursday, October 6 and Friday, October 7, 1994. Each of these employees was junior to the Claimants. The overtime involved operation of a spike removal machine to "rub out" spikes, as well as the distribution of tie plates and pandrol tie clips in preparation for work the following week. The Claimants were qualified to perform these tasks.

On December 1, 1994, the Organization filed a claim on behalf of the Claimants contending that they should have been given the opportunity to work overtime on Friday, October 7, 1994, rather than employees junior to them.

Section 7 - Overtime of the September 28, 1993 System Production Gang (SPG) Agreement provides, in pertinent part, that:

- "B. The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime."

At issue in this dispute is whether the Claimants were offered the opportunity to work overtime on October 7, 1994. If they were, in fact, offered overtime for Friday, October 7, 1994 and refused it, then the Carrier had the

right under Section 7(B) of the SPG Agreement to offer it to junior employees in the gang.

The Carrier contends that approximately one and one-half hours before completion of work on Thursday, October 6, 1994, all members of System Production Gang 5XC5 were asked by Assistant Roadmaster R.D. Arledge if they wished to work overtime on Thursday, October 6 and Friday, October 7, 1994, rubbing out spikes, throwing out spikes, and throwing out clips and plates. According to the Carrier, only four employees showed an interest in working the overtime and they were assigned it. It contends that the other members of the gang boarded the bus and returned to the hotel to prepare for their trip home for the weekend.

Save for Track Repairman K. R. Marple, none of the Claimants denied the Carrier's assertion that Assistant Roadmaster Arledge had offered them the opportunity to work overtime on Friday, October 7, 1994. Therefore, this contention stands un rebutted. Inasmuch as these Claimants declined the opportunity to work overtime, Section 7(B) of the SPG Agreement gave the Carrier the right to assign this overtime to junior members of the gang.

Track Repairman K. R. Marple denied that he was offered overtime for Friday, October 7, 1994. The Carrier has not refuted his contention. For instance, Assistant Roadmaster Arledge never claimed that Track Repairman Marple was unquestionably present when he offered the gang overtime for October 7, 1994. In light of these particular circumstances, Claimant Marple is entitled to compensation for the overtime worked by a junior member of the gang on October 7, 1994.

AWARD

Claim sustained in accordance with the Findings.

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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 16th day of November 1999.