

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33959  
Docket No. MW-34478  
00-3-98-3-106**

The Third Division consisted of the regular members and in addition Referee Stephen B. Rubin when award was rendered.

**(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Eastern Lines)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The ten (10) day suspension assessed Bridge Tender B.P. Andras for his alleged failure to comply with rules and instructions pertaining to working eight (8) hours on September 1, 1966 was without just and sufficient cause, based on an unproved charge and in violation of the Agreement (System File MW-9774/1046837D SPE).**
- (2) Bridge Tender B. P. Andras shall now be allowed sixty-four (64) hours of pay at his straight time rate, his record cleared of the charge and credited for eight (8) days for vacation qualifying purposes.”**

**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.

Bridge Tender Andras was charged with reporting for work and claiming pay for eight hours on September 1, 1996 without authority and in direct conflict with instructions that no overtime was to be worked without prior approval by the Supervisor. He was cited for possible violations of Rules 1.13 and 1.15, which state, in relevant part, that employees are to comply with instructions from Supervisors and that they must not leave their assignment, exchange duties or authorize others to fill their assignment without proper authority.

At the Hearing the Claimant and his representative requested the attendance of L. T. Albert and Tommy St. Marie at the Carrier expense in addition to the witnesses for the Carrier. The Presiding Officer denied the request.

The record developed at the Hearing showed that the Claimant was scheduled for a regular eight-hour shift on September 1, 1996. He did not work that shift, having agreed with Bridge Tender Albert to cover his shift at straight time and having notified his Supervisor. The Supervisor testified, and the Claimant agreed, that, until this incident, shift swapping was allowed without prior permission so long as no overtime was involved. When the next scheduled Bridge Tender did not relieve Albert, he called the Claimant, who worked the 8:00 A.M. to 4:00 P.M. shift on Sunday, September 1, 1996 at the overtime rate. The Supervisor testified that neither he nor the Bridge Inspector, whom he had deputized to act in these matters, had been consulted with respect to the shift in question and that the overtime work should have gone either to the employee assigned to the following shift or to the most senior Bridge Tender. He testified that the Claimant's action subjected the Carrier to a possible claim by those employees and that it was the responsibility of Albert to call in before asking another employee to come in on overtime and that it was the responsibility of the Claimant to call in before accepting overtime work.

The Claimant stated that he was only trying to help out, that the senior workers were not available to take the shift and that Albert could have ended up working 32 hours without relief if he had not responded. There is no indication that Albert was disciplined for his making an unauthorized call-out.

The Organization argues that the Claimant was denied a fair and impartial Hearing, that the Carrier failed to provide sufficient evidence of the alleged Rule

violation and that the discipline was not justified. The Carrier takes the opposite position on all of the issues.

All evidence necessary to making out the Carrier's case was adduced at the Hearing. The Carrier showed that the Claimant had submitted a claim for overtime pay without receiving permission from the Supervisor or his designee to work overtime. The Carrier did not have to rely on hearsay or other incompetent evidence to show those facts. Although Albert and St. Marie might have had some knowledge of the facts in this matter, there is no showing what they would have contributed to a full understanding of the incident. Had the Organization considered them necessary witnesses, it could have called them at its expense. The Claimant was not denied a fair Hearing.

The Claimant admits that he had no authority to assign himself overtime pay, nor did Albert, who called him out. The violation was in the Claimant's application for overtime pay without authority and is fully supported.

Because the violation consisted of the Claimant's demanding overtime pay on his own, what discipline, if any, was meted out to Albert for making the call-out without authorization is not germane. There is no indication that the ten-day suspension was arbitrary, capricious or unduly harsh.

The claim will be denied.

**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 22nd day of February, 2000.