

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34984
Docket No. MW-32351
00-3-95-3-194**

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: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Mr. D.L. Varner to perform overtime service (anchoring the track behind the TO-234 Tie Gang) on the Harrisburg Line at Birdsboro, Pennsylvania on August 16 and 18, 1993, instead of assigning B Foreman E.R. Rhinesmith who had performed said work during his assigned workday/work week (System Docket MW-3222).**
- (2) The Agreement was violated when the Carrier assigned Mr. D.L. Varner to perform overtime service (supervising the quality control of the track behind the TO-234 Tie Gang) on the Harrisburg Line east of Titus, Pennsylvania on August 20 and 21, 1993, instead of assigning B Foreman E.R. Rhinesmith who had performed said work during his assigned workday/work week (System Docket MW-3221).**
- (3) As consequence of the violation referred to in part (1) above, Claimant E.R. Rhinesmith shall be compensated at the B Foreman's time and one-half rate for all hours expended on August 16 and 18, 1993 by Mr. D.L. Varner in the performance of the work in question.**
- (4) As a consequence of the violation referred to in part (2) above, Claimant E.R. Rhinesmith shall be compensated at the B foreman's time and one-half rate for all hours expended on August**

20 and 21, 1993 by Mr. D.L. Varner in the performance of the work 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 Claimant holds seniority as a Track Foreman in Conrail's Maintenance of Way Department. He was regularly assigned as Foreman on the Jimbo Work Train headquartered at Enola Yard, Enola, Pennsylvania. On Monday, August 2, 1993, the Claimant was instructed to report to Pottstown, Pennsylvania, to work with the TO-234 Tie Gang on the Harrisburg Line at Birdsboro and Titus, Pennsylvania. The Claimant worked with the TO-234 Tie Gang until August 16, 1993.

Tie Gang TO-234 was supervised by Track Foreman D. M. Varner. On August 16, 18, 20 and 21, 1993, Foreman Varner was used on overtime to direct and supervise the work of the TO-234 Tie Gang. There is no question that Foreman Varner is junior to the Claimant.

The Organization contends that inasmuch as the Claimant was senior to Foreman Varner, Rule 17 of the BMW-Conrail Agreement required the Carrier to give preference to the overtime work on August 16, 18, 20 and 21, 1993, to the Claimant. The Organization maintains that during the course of the workweek, the Claimant ordinarily and customarily supervised the anchoring and quality control of the track behind the tie gang. Thus, when this work was required to be performed on overtime the Claimant was entitled to it, according to the Organization.

The claim is not meritorious, in the Board's opinion. Primary supervision of the TO-234 Tie Gang rested with Foreman Varner. The Claimant was assigned to the gang to assist Foreman Varner with his supervision of the work. They were not equally responsible for the supervision and direction of the work force. It was Foreman Varner who was responsible for ensuring the quality control of the work performed by the Tie Gang under his direction and supervision.

The quality control work performed on overtime on August 16, 18, 20 and 21, 1993, was properly assigned to Foreman Varner, in our opinion, because as the incumbent Foreman of the TO-234 Tie Gang he ordinarily and customarily performed this work during the workweek. Accordingly, there was no violation of Rule 17 when Foreman Varner was given preference to this overtime and the claim must be denied as a result.

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 20th day of September, 2000.