

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35375
Docket No. MW-34019
01-3-97-3-548**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned temporary Foreman D. Strand to perform overtime service (track inspector work) on July 4, 1996 instead of calling and assigning Mr. R. Mahonen who was assigned to and performed such work during the preceding work week (Claim No. 15-96).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. Mahonen shall be allowed eight (8) hours' pay at the track inspector's time and one-half 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.

The basic facts are not in dispute. During the workweek beginning Monday, July 1, 1996, the person holding the bulletined position of Track Foreman was on vacation. D. Strand, who held the bulletined position of Track Inspector, was upgraded to fill the temporary Foreman vacancy. The Claimant, who held the bulletined position of Machine Operator, was, in turn, upgraded to fill the temporary Track Inspector vacancy. As it turned out, the Claimant also held greater Track Inspector seniority than Strand.

On Thursday, the Fourth of July holiday, all positions were blanked. However, the Carrier did require the services of a Track Inspector that day. Strand received the work assignment instead of the Claimant.

The Organization maintains that the Claimant was entitled to the holiday work per Rule 20(b), which governs the division of overtime assignments. The Organization also maintained that the Claimant was the "regular" employee for the Track Inspector position for the week in question.

The Carrier, to the contrary, contends that the holiday work was not overtime and was not encompassed by Rule 20. In its view, the assignment was governed by Rule 15(k). In addition, Strand was the "regular" employee contemplated by that Rule.

On this record, we must find that the Organization has not satisfied its burden of proof for two reasons: First, the Organization has not successfully proven that the work in question was covered by the overtime Rules cited. For Rule 20 to apply here, the work in question must fall within the definition of overtime. It does not. Rule 17 describes four kinds of overtime: Work preceding or following and continuous with a regular work shift, which this was not; work in excess of 16 continuous hours, which this was not; work in excess of 40 hours for the week, which this was not; and, finally, work in excess of five days in the workweek, which this was not.

The foregoing conclusion has independent reinforcement in the on-property record. Although Rule 17 explicitly prescribes rates of pay for overtime work, the Organization contended, in its October 31, 1996 conference report, that Supplement No. 8 established the rate of pay for the holiday work in question. If the work in question was indeed overtime within the meaning of Rule 20, the rate of pay would presumably not be established by Supplement No. 8.

Secondly, the question of who is the “regular” employee within the meaning of Rule 15(k) remains unproven. While both the Organization and the Carrier provided argument and Award citations in support of their respective views, the issue remains at a standoff.

It is well-settled that the Organization has the sole burden to prove every element of its claim. On this record, it has not done so. Accordingly, we must deny the claim.

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 March, 2001.