

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35420
Docket No. MW-32867
01-3-96-3-210

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:

The Agreement was violated when the Carrier assigned junior Repairmen C.C. Cooper, L.B. Halsey and H. Hester to perform overtime service on the Monongahela Line on July 9, 10, and 11, 1994, instead of assigning senior Repairman M. Giannetti, T. W. Crilley and G. McAtee (System Docket MW-3636).

As a consequence of the violation referred to in Part (1) above, Repairmen M. Giannetti and T. W. Crilley shall each be allowed sixty-three hours (63) hours' pay at the repairman's time and one-half rate and Repairman G. McAtee shall be allowed the difference between the sixty-three (63) straight time hours' pay he received and the time and one-half rate he was entitled to.”

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 late June 1994, the Division Engineer for the Carrier's Pittsburgh Division posted a notice offering overtime for the weekend of July 9 - 10, 1994, to employees who hold any Track Department seniority on the Pittsburgh Seniority District. The overtime was part of a track rehabilitation project on the former Monongahela Railroad (MGA) property within the Pittsburgh Seniority District.

Evidently, not enough Trackmen volunteered for the overtime because the Carrier used Repairmen from the Canton, Ohio, Maintenance of Way Shop on the track rehabilitation project. These Repairmen did not hold Trackmen's seniority on the Pittsburgh Seniority District. They did not ordinarily and customarily perform this work during their workweek.

Three of the Canton Repairmen who worked overtime on the track rehabilitation project on July 9, 10 and 11, 1994 (L. B. Halsey, C. C. Cooper and H. Hester) had less seniority than other Repairmen assigned to the Canton Maintenance of Way Shop. The Organization filed claims on behalf of three of these senior Repairmen (T. W. Crilley, M. Giannetti and G. McAtee) for the overtime earned by junior Repairmen Halsey, Cooper and Hester on July 9, 10 and 11, 1994. It is the Organization's contention that the Claimants were entitled to this overtime work since they had more seniority than the Canton Repairmen who worked the overtime.

The Carrier allowed Repairman McAtee's claim but for straight time pay rather than the overtime claimed. However, the Carrier insists that this payment was made in error. It denied the claims of Repairmen Crilley and Giannetti contending that they had no entitlement to the overtime work in question since they did not have any Trackman's seniority on the Pittsburgh Seniority district and did not ordinarily and customarily perform this work during their workweek. And in any event, the Carrier maintains that Repairmen Crilley and Giannetti were called for the overtime at their respective residences the evening of June 8, 1994, but the telephone calls went unanswered.

The Board recognizes that Rule 17 did not entitle the Claimants to the overtime in question since they did not hold any Trackmen's seniority on the Pittsburgh Seniority District where all the work was performed. Nor did they ordinarily and customarily perform this work during their workweek. However, this was equally true of Canton

Maintenance of Way Shop repairmen Halsey, Cooper and Hester who were offered the overtime work on the former MGA Railroad property.

The Board subscribes to Awards from this Division which have held that “. . . where [a] Carrier is not obligated to use employees of a certain class, but chooses to do so, it is obligated to choose from that class according to seniority.” See, for example, Third Division Award 15840. Once the Carrier decided to offer Trackmen’s overtime on the Pittsburgh Seniority District to Repairmen assigned to the Canton Maintenance of Way Shop seniority district it was obligated to assign this overtime according to the Canton employees seniority.

The Carrier contends that senior Repairmen Crilley and Giannetti were telephoned the evening of June 8, 1994, to be offered the Trackmen’s overtime on the Pittsburgh Seniority District. According to the Carrier, Mr. Crilley’s answering machine responded and Mr. Giannetti’s telephone was busy. There is no evidence in the record before the Board to support the Carrier’s assertions. And in any event, the Board has held that a single telephone call is an insufficient attempt to locate a senior employee for overtime work. See Third Division Award 27701.

The Board recognizes that numerous Awards from this Division have held that the appropriate damages for work not performed by an aggrieved employee is compensation at the straight time rate of pay. However, Awards involving these parties have held that the appropriate compensation due senior Maintenance of Way employees who were deprived of overtime work is the overtime they would have earned had they not been improperly denied the overtime work. See Third Division Awards 26448, 27335 and 27638.

The Board is constrained to follow these precedents involving these same parties in disputes not dissimilar from the one now before us. Therefore, the claim shall be sustained for the overtimes Repairmen Crilley, Gianetti and McAtee would have earned on July 9, 10 and 11, 1994, on the former MGA track rehabilitation project had they been called for this overtime work in accordance with their seniority. The compensation due Repairman McAtee must be reduced by the straight time rate compensation previously allowed him for this lost overtime opportunity.

AWARD

Claim sustained.

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 26th day of April, 2001.