

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 35425  
Docket No. MW-33000  
01-3-96-3-391

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 Employes  
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 junior B&B Inspector D. J. **Lauer** to perform overtime contractor protection work at the bridge over Frankford Avenue, Frankford yard on November **6, 1994**, instead of assigning senior B&B Inspector J. H. Love (System Docket MW-3825).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. H. Love shall be compensated for ten hours' pay at his 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 Claimant was a Bridge Inspector headquartered at Ann Street in Philadelphia, when this dispute arose. His normal hours were 7:00 A.M. to **3:30** P.M. with Saturday and Sunday as rest days. D. J. Lauer was also a Bridge Inspector headquartered at Ann Street in Philadelphia. His normal hours were also 7:00 A.M. to **3:30** P.M. with Saturday and Sunday as rest days. The Claimant was senior to Mr. Lauer on the B&B Bridge Inspectors' roster.

On Sunday, November 6, 1994, Mr. Lauer worked ten hours of overtime on bridge 0.05 on the Delair Branch. This bridge was one of the bridges on Mr. Lauer's territory that he normally inspected. The bridge was being sandblasted by a contractor on Sunday, November **6, 1994**.

On January 6, 1995, the Organization submitted a time claim on behalf of the Claimant contending that he should have been assigned the overtime work on Sunday, November 6, 1994, since he was senior to Bridge Inspector Lauer. It is the Organization's contention that Mr. Lauer was not assigned bridge inspection work on November 6, 1994. Rather, he was assigned to protect the contractor who was sand blasting bridge 0.05 that day. Since this was not work that Mr. Lauer ordinarily and customarily performed during the workweek the Organization asserts that this overtime work should have been offered to the Claimant since he has greater seniority than Mr. Lauer.

The Carrier denied the claim contending that Mr. Lauer was asked to work overtime on a bridge that he normally inspects in anticipation of inspecting the bridge upon completion of the sand blasting by the contractor on November **6, 1994**. Since this was work that Mr. Lauer ordinarily and customarily performed during the workweek, he was the proper B&B Inspector to be assigned this overtime work, according to the Carrier.

The burden rests with the Organization to demonstrate that B&B Inspector Lauer was not performing bridge inspection work at bridge 0.05 on November **6, 1994**. It claims that he was providing protection for the contractor who was sand blasting the bridge but there is no substantial evidence in the record to support that assertion.

The Carrier insists that Mr. Lauer was assigned to bridge 0.05 in anticipation of inspecting the bridge upon completion of the sand blasting by the contractor on

November 6, 1994. That he also performed other incidental tasks this day did not change the fundamental reason for this overtime assignment.

Inasmuch as B&B Inspector Lauer ordinarily and customarily inspected this particular bridge during the workweek the Board finds that he was the proper Inspector to be assigned the overtime work on Sunday, November **6, 1994**. The claim is denied as a result without addressing the Carrier's contention that the initial claim was untimely filed by the Organization and is thus barred.

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 26th day of April, 2001.