

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35498  
Docket No. MW-34228  
01-3-97-3-790

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim on behalf of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned other than the regular assigned employee to perform overtime service on April 27, 30 and May 1, 9, 18, 19, 21 and 27, 1996 rather than allowing B&B Mechanic Gerry Jones who was the employee performing the work during his regularly assigned hours to perform the overtime (Claim No. 12-96).
- (2) As a consequence of the violation referred to in Part (1) above, B&B Mechanic Gerry Jones shall be allowed thirty-seven (37) hours of pay at the mechanic'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 Claimant held seniority in the Carrier's B&B Subdepartment at Duluth, Minnesota. On the dates set forth in the claim, the Carrier assigned overtime for work at the Ore Docks. While the Claimant typically performed that work and the overtime work was continuous with the shift worked by the Claimant, the Claimant was not utilized to perform the overtime work. This claim followed.

The Organization cites us to Rule 20(a):

**"RULE 20**

**Division of Overtime**

- (a) During the regular assigned workweek, an employee assigned to a particular job during the workday at a point where the overtime is required continuous with his shift will be given all the overtime connected with that job."

Under ordinary circumstances, the Claimant should have been entitled to the claimed overtime work. However, the record shows that the Claimant was injured. Commencing April 22, 1996, the Claimant was limited in his work due to severe wrist pain. The Claimant returned to work with a work status form stating "No use of left hand." On April 24, 1996, the Claimant was medically limited to "No left hand work" and on May 10, 1996, the limitation was "avoid using left hand to forcible, radially, deviations," and no firm grasping or climbing of ladders. The Claimant was allowed to continue working his normal day shift, but was given tasks where the left hand restriction would not be a problem, frequently running repairs. During the day, additional employees were available to assist the Claimant in the event conditions required.

The record further shows that effective May 22, 1996, the Claimant was allowed to "return to work with no apparent limitations."

The Carrier declined to assign the overtime to the Claimant on all of the claimed days for the following reasons:

"... Generally, after hours on overtime, there are no additional employees to assist with tasks that might require two hands.

**We decided not to assign you overtime work due to the work restriction; you were not allowed to use your left hand. Further, a coworker to assist you with specific tasks is generally not available on the off hours. Emergency situations can develop when you are working at the docks by yourself, which could result in further injury when your left hand can not be used. And, in the interest of expediting your successful recovery from the wrist injury, working beyond an eight hour day could have been detrimental. It was for these reasons that you were assigned relatively light duty during the normal days and restricted from overtime during your recovery period.”**

**In essence then, the Carrier determined that because of his wrist injury, the Claimant was unfit to perform the overtime work on the days set forth in the claim. Fitness and ability determinations are to be made by the Carrier, subject only to review under the limited standard of examining whether the Carrier’s determinations are arbitrary i.e., without a rational basis. While the Carrier’s conclusion that the Claimant was unfit to perform the overtime work may be subject to debate, we find that prior to May 22, 1996, the Carrier had a rational basis for determining that the Claimant was not fit to perform the overtime work. The record establishes that the Claimant was injured; he was working with restrictions; and there were potential work situations during the overtime hours which were outside of his restrictions. The Carrier’s conclusion that the Claimant was unfit to perform overtime work prior to May 22, 1996 was not arbitrary. For the dates set forth in the claim prior to May 22, 1996, the claim shall be denied.**

**However, the record shows that the Claimant was medically released to perform full duties effective May 22, 1996. With that full medical release, the Carrier had no rational basis for denying the Claimant his contractual entitlement to overtime after that date. One of the claimed dates is May 27, 1996. The denial of overtime for that date was arbitrary and in specific violation of Rule 20(a). The Claimant shall therefore be awarded the claimed overtime for May 27, 1996 (3.5 hours).**

### **AWARD**

**Claim sustained in accordance with the Findings.**

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**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 21st day of June, 2001.**