

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35572
Docket No. MW-33461
01-3-96-3-984

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned or otherwise allowed junior employee E. Arnold to perform overtime service on September 1 through 4, 1995 instead assigning Mr. P. Lubeck to perform such work (System File C-22-95-0220-01/8-00249 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. P. Lubeck shall be compensated for thirty-four and two-thirds (34 2/3) hours at his time and one-half rate of pay.”

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.

At all times pertinent to this case, the Claimant was regularly assigned as a First Class Carpenter on Northern Division B&B Crew 47J, under the general supervision of B&B Supervisor H. E. Pottinger. The Claimant established and holds seniority in the Bridge and Building (B&B) Subdepartment as a B&B Foreman, and Carpenter Helper. During August-September 1995, he worked a bulletined "compressed" work week, consisting of Monday through Thursday with Friday, Saturday and Sunday designated as rest days.

Prior to the date the instant dispute arose, the Claimant had properly notified Supervisor Pottinger of his wishes to perform relief work on the Pump Repairman's position at Bridge L-0 at LaCrosse. The record shows that this particular position generates substantial overtime. Pursuant to his proper request, the Claimant had been called in accordance with his seniority to perform such relief work many times in the past.

The record also shows that the Claimant took several days of vacation from August 7 through 13, 1995. However, he reported at LaCrosse on Monday, August 14, 1995 in anticipation of providing relief coverage for the duration of the incumbent Pump Repairman's vacation from August 14 through 20, 1995. When he reported, however, he learned that because he had been away on vacation Supervisor Pottinger had assigned B&B employee E. Arnold, who was junior to the Claimant in B&B seniority, to provide the required relief coverage on that occasion.

Following a conversation between the Claimant and B&B Supervisor Pottinger, the Carrier issued a memorandum dated August 14, 1995 which reads, in part pertinent to this particular case, as follows:

"DUE TO THE MISUNDERSTANDING THIS PAST WEEKEND ON RELIEF FOR THE PUMP REPAIRER'S POSITION AT LACROSSE, THE FOLLOWING PROCEDURES WILL BE FOLLOWED . . . WHEN WEEK END RELIEF IS NEEDED THE SENIOR QUALIFIED EMPLOYEE WILL BE GIVEN THE RIGHT OF FIRST REFUSAL. IT WILL BE FROM 1530 HOURS ON FRIDAY UNTIL SUNDAY PM TO BE WORKED OUT WITH THE PUMP REPAIRER. THE ONLY CHANGE FROM WHAT HAS BEEN IS I WANT TO BE NOTIFIED PERSONALLY OF EACH QUALIFIED PERSON'S DECISION. IF I

**DO NOT HEAR FROM ANY INDIVIDUAL I WILL HAVE TO TAKE
THAT AS A REFUSAL TO THE RELIEF WORK. . . .”**

On September 1 through 4, 1995, the Labor Day weekend, the regularly assigned Pump Repairman at Bridge L-0 reported off work due to “family” concerns. Friday, September 1, 1995 was the first of the Claimant’s three regularly assigned consecutive rest days and the Claimant should have been accorded right of first refusal under Rule 8(c) to cover the temporary vacancy in accordance with his request and in recognition of his seniority. See Third Division Awards 2994, 6627, 29537 and 33421. Instead of assigning the Claimant, however, the Carrier once again utilized junior employee E. Arnold to perform the overtime service on that Labor Day weekend. It is not disputed that Arnold expended 34 and two-thirds hours performing overtime service on that weekend and that is the measure of the Claimant’s loss as a consequence of the Carrier’s violation of his seniority rights.

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 24th day of July, 2001.