

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35573
Docket No. MW-33527
01-3-96-3-1088

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
(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 Maintenance Foreman R. I. Stewart to perform overtime service (piloting TCJ9 Switch Grinder and inspect its performance) on the Lewistown Subdivision on September 5, 6, 9, 10, 11, 12, 13, 16, 17 and 18, 1995 (System Docket MW-4091).
- (2) As a consequence of the violation referred to in Part (1) above, Foreman R. S. Madden shall be allowed one hundred six and one-half (106.5) hours' pay at his time and one-half rate and he shall receive credit for the claimed rest days for vacation and benefit purposes.”

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.

During the period September 5 through 18, 1995, the TCJ9 Switch Grinder was performing maintenance work on switches and turnouts throughout the Lewistown Sub-Division. The TCJ9 Switch Grinder operates on the rails and requires a qualified pilot to ensure safe movement. R. I. Stewart was the Sub-Division Maintenance Foreman and usually performed duties associated with the piloting and general operation of the TCJ9 Switch Grinder during his normal tour of duty, from 7:00 A.M. until 3:30 P.M. with Saturday and Sunday as rest days. On the dates of September 5, 6, 9, 10, 11, 12, 13, 16, 17, and 18, 1995, Stewart worked a total of 106.5 overtime hours as pilot for the switch grinder, at the premium rate of pay.

On the dates of the dispute, the Claimant was an assigned I&R Foreman and he performed track inspection duties during his normal tour of duty, 7:00 A.M. until 3:30 P.M. with Saturday and Sunday as rest days. In this case, the Claimant asserts entitlement by superior seniority as a Maintenance Foreman to all overtime work as pilot performed by Stewart on the claim dates. Careful examination of the record evidence shows that the Claimant has no valid claim to the overtime at issue. The Carrier's use of Stewart to perform on an overtime basis the same pilot work that was ordinarily and customarily performed by him during the course of his regular workweek was in strict compliance with Rule 17 of the Agreement:

"RULE 17 - PREFERENCE FOR OVERTIME WORK

Employees will, if qualified and available, be given preference for overtime work, including calls on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

The Board has consistently held that Rule 17 overtime preference does not rely on seniority standing in the classification, per se, but rather runs in favor of the senior employee who ordinarily and customarily performed the work during the course of his/her workweek or day. See Third Division Awards 26710, 29435, 29551, 31664, 31673, 31674, 31924, 31925, 32293, 33165 and 33437.

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 24th day of July, 2001.