

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35599
Docket No. MW-33118
01-3-96-3-542**

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

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(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 employees *P. A. Regenold and M. J. Vorndran* to perform rest day service operating a tie handler and front end loader in the Piqua Yards, Fort Wayne, Indiana on November 19 and 20, 1994 (System Docket MW-3863).**
- (2) As a consequence of the aforesaid violation, Claimant *T. L. Sorrell* shall be compensated at the Class 2 Operator's time and one-half rate for all hours worked by the junior employees on the dates claimed.”**

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.

Although the claim as here presented requests compensation for both November 19 and 20, 1994, the record shows that the Claimant has already been allowed 11 hours at the time and one-half rate of pay for November 19, 1994. This payment, according to the record, was allowed on the payroll period ending March 14, 1995. The Board will, therefore, here only address the claim as it relates solely to the date of November 20, 1994.

The claim arises out of a contention that the Claimant, a Machine Operator assigned to Elkhart, Indiana, on the Dearborn Division, is entitled to overtime wages earned by employees junior in seniority in a failure on the part of the Carrier to have notified the Claimant of the availability of overtime work on the rest days of his assignment in the Piqua Yards in Fort Wayne, Indiana.

With respect to work on November 20, 1994, the Carrier argues that it met its contractual obligations when its Production Engineer made a good faith effort to call the Claimant for work that was to be available on that date. It submits that at 1:57 P.M. on Saturday, November 19, 1994, the Production Engineer, as supported by a call log, made a call to the telephone number of record for the Claimant to notify him of the availability of overtime work for November 20, 1994, but received no answer. Further, the Carrier argues that nothing was submitted to support the contention that the Claimant had an answering machine on at the time, as alleged in support of the claim. Thus, the Carrier says it used junior employee Regenold, who had worked the previous day, to operate a tie handler and front end loader.

In study of the record it seems evident, as urged by the Organization, that the overtime work for both November 19 and 20, 1994 was planned on November 18, 1994, and that for reasons not made a matter of record that the Claimant was not notified of the availability of such overtime work at that time. In this respect, the Board finds noteworthy the following excerpt from a letter of record from the Claimant to the Carrier in regard to concerns that he had on November 18, 1994 that employees junior in seniority to him were going to be utilized for overtime work on his rest days:

"After working overtime that Friday, 11-18-94, I was informed by Supr. Cabaris not to come in to work Sat. or Sunday, 11-19/20-94, assuring me that no 'younger' men or operators would be working. I informed Supr. Cabaris that I was available, if needed, for this work and went home that Friday.

When I returned to work that following Monday, for my regular tour of duty, I discovered that younger operators did in fact work the overtime at Fort Wayne Yards. It was the operator that I had just displaced the week before on 11-16-94 & an Elk. man.

I asked Mr. Cabaris about this infraction. His reply was to fill out a claim and call my union man."

Nothing of record shows that the Carrier sought and obtained a statement from Supervisor Cabaris to refute the above statement of the Claimant.

Further, the Board is not persuaded that the Carrier referenced call log, or what is a form identified as the "Daily Record of Events," covering the date of November 19, 1994, necessarily supports the contention that the overtime work was not, in fact, preplanned because it lists the Claimant as having been called for the overtime work at 1:57 P.M.

The time of call, with the name of the Claimant, is the last of six names written in one particular section on the Daily Record of Events for November 19, 1994. After the name of the Claimant, following a blank line, the document then lists the names of supervisors, followed by the name and time other individuals were called at 2:10 P.M. and 2:11 P.M. Conspicuously absent from this call list for November 19, 1994 are the two employees junior in seniority to the Claimant who are named in the Statement of Claim as having been assigned to perform the disputed rest day service on November 19 and 20, 1994. Thus it appears, without any apparent call having been made to these junior employees on November 19, 1994, they reported for duty and worked on November 20, 1994. It therefore must be presumed that because both of the junior employees worked on November 19 and 20, 1994 that the overtime work was planned in advance and that they were notified to cover such work on November 18, 1994.

In study of the Daily Record of Events the Board also finds it significant that whereas a telephone number is handwritten on the document following other listed names, including three instances where it is shown that there was reportedly no answer, that no telephone number whatever is listed after the Claimant's name.

In this same respect, the Board would note that the Carrier itself appears to have likewise been concerned about the purported telephone call, a Carrier exhibit, i.e., copy

of a letter of October 12, 1995, showing a blind copy notation whereby a request was made to "get a statement from Production Engineer Coffin confirming there was no answer machine turned on at the Claimant's number when called at 1:57 P.M. on November 19, 1994."

Under the circumstances, the Board concludes that the Claimant is entitled to be compensated as claimed at the Class 2 Operator's time and one-half rate for all hours of work that he could have performed if properly notified and utilized in place of junior employees on November 20, 1994.

AWARD

Claim sustained in accordance with the Findings.

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.