

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35603
Docket No. MW-33271
01-3-96-3-744

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 Vehicle Operator K. C. Hager to perform overtime service (cleaning snow from switches and other related snow duty work) at Buckeye Yards, Columbus, Ohio on January 20 and 21, 1995, instead of calling and assigned senior Vehicle Operator D. Siegenthaler to perform said work (System Docket MW-3970).
- (2) The Agreement was violated when the Carrier assigned Welder Helper D. Grow to perform overtime service (cleaning snow from switches and other related snow duty work) at Buckeye Yards, Columbus, Ohio on January 22, 1995, instead of assigning Vehicle Operator D. Siegenthaler to perform said work (System Docket MW-3971).
- (3) As a consequence of the violation referred to in Part (1) above, Claimant shall be allowed thirty (30) hours' pay at the vehicle operator's time and one-half rate.
- (4) As a consequence of the violation referred to in Part (2) above, the Claimant shall be allowed twelve (12) hours' pay at the vehicle operator'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 sole issue for determination here is whether the proper remedy for an admitted failure on the part of the Carrier to provide opportunity of overtime work to the Claimant, who was available, qualified, and more senior on the roster than the employees utilized, is the time and one-half rate of pay, as claimed, or, conversely, the straight time rate of pay, as already allowed by the Carrier.

For the same reasons as set forth in Third Division Award 35602, involving the same parties here in dispute, the claim is sustained for the difference that the Claimant has already been allowed by the Carrier at the straight time rate of pay and the time and one-half rate of pay.

The Board would note, however, that although the claim as stated above requests 30 hours' compensation for January 20 and 21, 1995, the record as presented reveals that in a letter of May 19, 1995 to the District Chairperson that the Division Engineer, in acknowledging that the Claimant had not been properly called for overtime work, allowed the straight time rate of pay for only 16 hours on January 21, 1995. In this letter the Division Engineer stated that there was no record of a time sheet having been turned in for January 20, 1995. Thus, in subsequent conference, as confirmed in a Carrier letter of September 22, 1995, the Organization withdrew that portion of the claim from further handling. No dispute is shown as concerns the amount of time involved in the second part of the claim, i.e., 12 hours pay for January 22, 1995. In the circumstances, the claim will be sustained for the difference between 28 hours pay at the

Vehicle Operator's time and one-half rate of pay and what the Claimant has already been allowed.

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.