

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35604
Docket No. MW-33748
01-3-97-3-216**

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 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 Track Foreman R. L. Day to perform overtime service at Mile Post 79.5 on the West Virginia Secondary near Athens, Ohio on July 14 and 15, 1995, instead of calling and assigning senior Track Foreman G. R. Moses to perform said work (System Docket MW-4163).**
- (2) As a consequence of the aforesaid violation, Track Foreman G. R. Moses shall be allowed sixteen (16) hours’ pay at his time and one-half rate and six and one-half (6.5) hours’ pay at his double time 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 Track Foreman utilized, is the time and one-half and double time rates 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, i.e., 16 hours at the time and one-half rate of pay and six and one-half hours at the double time rate of pay.

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.