

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36512
Docket No. MW-35737
03-3-99-3-713**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 called and assigned Youngstown Seniority District Crane Operator R. L. Kadri to perform overtime service on the Cleveland Seniority District in the vicinity of Mentor, Ohio on September 19, 20, 21 and 26, 1997 instead of assigning Crane Operator F. Rosario, Jr. (System Docket MW-5194).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. Rosario, Jr. shall now be compensated fifty-one (51) hours' pay at his respective time and one-half 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.

On August 11, 1997, the Claimant was awarded a bid position of Locomotive Crane Operator on the Carrier's Cleveland Seniority District.

On September 19, 20, 21 and 26, 1997, the Carrier determined that there was a need for a locomotive crane to move material at control points in Mentor, Ohio, which is located within the Cleveland Seniority District. The Carrier assigned the work to R. L. Kadri, a qualified Locomotive Crane Operator who holds seniority on the Youngstown Seniority District. Kadri worked a total of 51 hours performing the work at issue here, at the premium rate of pay.

On November 10, 1997, the Organization submitted a claim on behalf of the Claimant, alleging that he should have been called for the overtime on the dates in question instead of an Operator from another seniority district. Appendix C, referenced in Rule 4, contains maps which outline the separate geographical seniority districts. The Organization contends that the Carrier was required to give the Claimant preference for the overtime work in accordance with Rule 4, Section 5 (a) and Rule 17, which state:

"RULE 4 - SENIORITY

Section 5. Seniority districts

- (a) The operating division seniority districts shown in Appendix 'C' and the following separate seniority districts are established:

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 Carrier denied the claim. The Carrier noted that, in contrast to Kadri, who qualified on the Locomotive Crane in September 1975, the Claimant was not qualified to operate that piece of equipment.

In its appeal of the claim denial, the Organization stated:

"... [Claimant] has operated cranes for a number of years, can operate the locomotive crane (CL3035), is willing to demonstrate his ability . . . in fact

looks forward to the opportunity so he can finally have his qualification card so marked to show his qualifications.

I suggest that a date be arranged to settle this matter with [Claimant] and this office of a practical demonstration be given by [Claimant] of his qualifications to perform the duties of the Locomotive Crane (CL3035) position."

The Carrier agreed that the Claimant would be afforded the opportunity to demonstrate his qualifications. However, the Claimant had already left the Crane Operator position on September 29, 1997 for another Machine Operator position. The question of the Claimant's qualification was not resolved.

The Organization had the burden of proving that the Carrier violated the Claimant's Rule 17 overtime preference rights by misassignment across Rule 4 seniority district boundaries. It did not meet that evidentiary burden. In order to be given preference for overtime work under Rule 17, the employee must be qualified and available to perform the work. The Claimant never demonstrated his qualifications to operate the locomotive crane. Absent this necessary factual predicate, the claim must be denied.

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 23rd day of April 2003.