

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36588  
Docket No. MW-35600  
03-3-99-3-522

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 class 2 Machine Operator D. Trussell to perform rest day overtime service operating Kershaw Brushcutter WC-2054 cutting brush along #2 Track between Hudson and Ravenna, Ohio on Saturday, November 8, 1997 (System docket MW-5169).
- (2) As a consequence of the violation referred to in Part (1) above, class 2 Machine Operator P. Spoljaric shall be allowed ten (10) hours' pay at his 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 Claimant held a Machine Operator Class II position at Canton, Ohio. His regular tour of duty was from 7:00 A.M. to 3:30 P.M. with Saturday and Sunday as his rest days. Employee D. Trussell also held a Machine Operator Class II position at Canton, Ohio. His tour of duty was the same as the Claimant's, as were his rest days. Both employees were assigned to the same camp car gang headquartered at Canton, Ohio. It is undisputed that the Claimant was senior to Trussell on the Youngstown Seniority District Machine Operator's Roster.

On Saturday, November 8, 1997, the Carrier assigned Machine Operator Trussell to cut brush between Hudson and Ravenna. This was overtime work for Trussell because Saturday was one of his rest days.

On November 17, 1997, the Organization filed a claim and grievance on behalf of the Claimant contending that he should have been offered the overtime work on November 8, 1997, because he was senior to Machine Operator Trussell. Neither the Claimant nor Trussell ordinarily or customarily performed brush cutting during the course of their workweek prior to Saturday, November 8, 1997.

While the claim was being handled on the property, a dispute arose regarding the equipment used by Machine Operator Trussell to cut brush on Saturday, November 8, 1997. The Organization insisted that it was a Kershaw Brushcutter whereas the Carrier claimed that it was a Portec-Dual Head Brushcutter. If Trussell used the Portec Brushcutter to cut brush on November 8, 1997, then the Claimant did not have preference for this overtime work because he was not qualified for it.

Exactly what equipment Machine Operator Trussell used to cut brush on Saturday, November 8, 1997, was never resolved.

The Organization submitted a statement from Repairman D. Lanham who claimed that Trussell used a Kershaw Brushcutter. However, Lanham submitted this statement seven months after the overtime work was performed. Moreover, Repairman Lanham claimed that Trussell used the Kershaw Brushcutter on "11/7/97," the day before November 8, 1998, when the brush cutting work was performed between Hudson and Ravenna, Ohio. Additionally, Lanham stated that he identified the brush cutter used by Trussell, but he did not say that he observed him using this equipment.

The Board is unable to determine from the record before us precisely what brush cutting equipment Machine Operator Trussell used on overtime on November 8, 1997. As observed above, this determination is central to the instant claim inasmuch as the Claimant was qualified on the Kershaw Brushcutter but was not qualified on the Portec Brushcutter. Because we cannot determine what equipment was used to cut brush on Saturday, November 8, 1997, we have no alternative but to dismiss the claim.

**AWARD**

**Claim dismissed.**

**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 16th day of June 2003.**