

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36614
Docket No. MW-34636
03-3-98-3-293**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 used Mr. Wilkinson and/or W. H. Jordan to perform overtime service in connection with the moving of camp cars and equipment: (a) from Loudonville, Ohio to New Castle, Pennsylvania on August 29 to September 3, 1996; (b) from Youngstown, Ohio to LaPorte, Indiana on September 25 to 30, 1996; (c) from Ashtabula, Ohio to Dunkirk, New York on October 3 to 7, 1996; and (d) from Dunkirk, New York to Kenton, Ohio on October 10 to 14, 1996 (System Dockets MW-4610, MW-4611, MW-4612 and MW-4613).**
- (2) As a consequence of the violations referred to in Part (1) above, Foreman S. Stacy shall be compensated at his appropriate overtime rate of pay for all hours expended in the performance of the work in question.”**

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.

It is not disputed that, at times pertinent to this matter, S. Stacy was the "A" Foreman assigned to Inter-Regional Gang 320, W. H. Jordan was the Assistant Foreman assigned to that Gang, and H. Wilkinson, who held no Foreman seniority, was unassigned. Four separate claims filed on the property i.e., one claim for the camp car move from Loudonville, Ohio, to New Castle, Pennsylvania, on August 29 to September 3, 1996; a second claim for the camp car move from Youngstown, Ohio, to LaPorte, Indiana, on September 25 to 30, 1996; a third claim for the camp car move from Ashtabula, Ohio, to Dunkirk, New York, on October 3 to 7, 1996 and a fourth claim for the camp car move from Dunkirk, New York, to Kenton, Ohio, on October 10 to 14, 1996 were combined during the on-property handling and upon presentation to the Board.

As the Claimant in this matter, S. Stacy asserts a violation of his "A" Foreman seniority rights under Rule 17 when the Carrier utilized Assistant Foreman Jordan and/or Trackman Wilkinson to perform certain work on an overtime basis on various dates. The controlling language of Rule 17 Preference for Overtime Work, reads as follows:

"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." (Emphasis added)

As described in the claim(s), the specific work at issue was:

". . . preparing the camp cars for the move, coordinating the move with the transportation department, insuring the cars are properly placed at the new site, and hooked up with water and electricity. During the move he accompanied the camp cars to see that they got to their destination and to handle any problems that might arise during the move. At the new

destination the camp cars were spotted and set back up. The flat cars with the machinery were also spotted."

The Claimant and the Organization assert that the Claimant's Rule 17 rights were violated when the Carrier utilized Wilkinson to perform overtime service in connection with the above-described moving of camp cars and related equipment utilized by Gang 320 and/or Gang 230, from Loudonville, Ohio, to New Castle, Pennsylvania, on August 29 to September 3, 1996 and from Youngstown, Ohio, to LaPorte, Indiana, on September 25 to 30, 1996; Messrs. Wilkinson and Jordan to perform overtime service in connection with the moving of camp cars and related equipment from Ashtabula, Ohio, to Dunkirk, New York, on October 3 to 7, 1996; and, Jordan to perform overtime service in connection with the moving of the shared camp cars and related equipment from Dunkirk, New York, to Kenton, Ohio, on October 10 to 14, 1996.

It is not open to debate on this record that "A" Foreman Stacy held greater Foreman seniority than Assistant Foreman Jordan and that Trackman Wilkinson had no seniority in the Foreman position. The Claimant clearly was qualified to perform the work of overseeing and supervising camp car movements in dispute, because the record shows that, the Claimant, had satisfactorily performed such work in the past. However, these facts alone do not establish a viable Rule 17 claim to preference for all overtime calls to perform such work. This is so because the work entitlement language of Rule 17 does not speak of positions or titles, but rather is couched in terms of "ordinarily and customarily perform[ing] this work during the course of [the claiming employee's] work week or day."

In this case, the record does not show whether any individual or position ordinarily and customarily performed such work during the course of his/her work-week or work day. Rather, the record shows that the Claimant, among others, has been assigned to perform this work on an overtime basis in the past. It does not necessarily follow that he was assigned this work because he was contractually entitled to it under Rule 17. Indeed, the record shows that the Carrier paid "penalty claims" filed by Jordan just a few weeks before the instant claims were filed by the Claimant, on grounds that the Carrier had called and assigned the Claimant, rather than Jordan, to manage the movement of some camp cars on July 26 - 27, 1996. Without making or implying any finding that Jordan had an

enforceable claim of entitlement to the disputed work under Rule 17, we find no support in the Agreement language for the Claimant's claim that, by dint of his superior seniority in the "A" Foreman position, he had priority entitlement to overtime performance of that work on the claim dates. In short, we find insufficient proof in this record to support the Claimant's claim(s) that the work was his to claim under the standards set forth in Rule 17.

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 29th day of July 2003.