

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36624
Docket No. MW-36238
03-3-00-3-451

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Missabe & Iron Range Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior Bridge and Building Department Mechanics M. W. Halvorson, B. H. Borgelt and D. R. Wick to perform planned overtime service (conveyor pulley repair) at Two Harbors, Minnesota on May 24, 1999, instead of assigning Mechanics M. W. Klug, S. H. Knutie and G. Helgeson (Claim No. 28-99).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. W. Klug, S. H. Knutie and G. B. Helgson shall now each be compensated for eight (8) hours' pay at their respective time and one-half rates of 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.

Claimants Klug, Knutie and Helgeson each established and hold seniority in the Maintenance of Way and Structures Department, B&B Subdepartment as Storage Facility Mechanics. The Claimants were assigned and working as such on the 7:00 A.M. to 3:00 P.M. shift at the Two Harbors Ore Docks when this dispute arose.

The record demonstrates that a "problem" was detected with a pulley on the main shiploader belt at Two Harbors. The pulley was scheduled for replacement by Maintenance of Way Storage Facility Mechanics on May 24, 1999. On May 24, 1999, a crew of regularly assigned day shift mechanics, Messrs. Halvorson, Borgelt and Wick, was assigned the work of repairing the pulley at the beginning of their 7:00 A.M. shift and worked on the pulley repair assignment continuously until 11:00 P.M. to complete the pulley repairs. In the meantime, Claimants Klug, Knutie and Helgeson also worked their regular day shift hours, but were assigned to performing a different set of tasks that did not require any overtime to complete.

Thereafter, on June 4, 1999, the Organization submitted a claim on behalf of Messrs. Klug, Knutie and Helgeson, in which the General Chairman alleged that:

"On Monday, May 24, 1999, a 3-11 p.m. shift was needed for repairs to a pulley on conveyor No. 5 in Two Harbors. Foreman S. Larson started assigning a crew to work on the pulley for two shifts, sixteen hours. He also had a midnight shift lined up to work on the pulley. Claimants were never asked to work the overtime, even though they were older than most of the crew that did work.

Because Rule 20(b) and the Special Agreement dated March 29, 1994 were violated, I ask that the three claimants be compensated the eight (8) hours of overtime they were denied."

In its denial of the claim, the Carrier set forth the following explanation:

"Our investigation reveals that your B&B Foreman selected the crew to perform the repair job. The crew consisted of Messrs. Halvorson, Borgelt and Wick. They worked over from the 0700 shift to the 1500 shift as required under Rule 20(a) Continuation of Work. Regarding the 2300 shift, M. Lennartson was assigned 1500 shift B&B Mechanic. He stayed continuously with the repair job from his afternoon shift into the 2300 shift. He was the only extra mechanic working through 2300 shift. He too, was held on under Rule 20(a) Continuation of Work."

Rule 20 - Division of Overtime - states:

- "(a) During the regular assigned workweek, an employee assigned to a particular job during the workday at a point where overtime is required continuous with his shift will be given all the overtime connected with that job.
- (b) All other overtime will be given to the senior qualified available employee working in the classification at the headquarters point where the overtime is to be performed."

The Carrier asserts that, under the circumstances, the "plain language" contained in the Agreement supports its application of Rule 20(a). For its part, the Organization maintains that the "extenuating circumstances" require a "different application" of Rule 20. Specifically, the Organization argues that the senior crew rather than the junior crew should have been assigned to the pulley repair job at the outset because the Carrier knew in advance that overtime would be required to complete the pulley repair job. From this premise the Organization concludes that seniority order must govern work assignments, so that the senior employees will earn overtime anticipated to occur in conjunction with a straight time shift. The creative interpretation of Rule 20 urged by the Organization is not without logical appeal, but it is more properly addressed to the Carrier at the bargaining table than to the Board in an arbitration forum. In our considered judgment, the plain language of Rule 20(a) must prevail over such equitable arguments and requires a denial award in this case.

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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.