

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36757  
Docket No. MW-35918  
03-3-99-3-943**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe N. Marnich to overtime service (shuttle repair) at Two Harbors on September 6, 1998, instead of Mechanic S. Larson (Claim No. 27-98).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Larson shall now be compensated for eight (8) hours' pay at the applicable mechanic's time and one-half rate 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.

The Claimant and N. Marnich are B&B Mechanics assigned to the Carrier's ore loading facility at Two Harbors, Minnesota. The Claimant is senior to Marnich. This

dispute arose as a result of a shuttle breakdown at Two Harbors prior to the 7:00 A.M. shift on Sunday, September 6, 1998. Marnich's regular starting time that day was 3:30 P.M. The Claimant was observing a rest day. The Carrier called in Marnich for overtime to begin work at 7:30 A.M. to repair the shuttle rather than calling the Claimant. This claim followed.

Rule 20(a) provides:

“(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.”

Rule 20(b) provides:

“1. Overtime will be offered in seniority order to those employees working in the classification bid to the location, or whose bid includes the location, where overtime is required.”

According to the Organization, Marnich's regular duties consisted of running repairs - walking belts and loading boats. Further, according to the Organization, shuttle repairs were not Marnich's regular work of an off-shift, but “was a totally different job.” The Organization asserts that “[a]t 1500, Marnich would have been walking belts or loading a boat as they normally do on off-shift.” Therefore, according to the Organization, by not calling in the Claimant for the overtime and assigning the shuttle repair work to Marnich, the Carrier violated the Claimant's superior seniority under Rule 20(b).

The Carrier argues that Marnich was a qualified Mechanic whose duties included any and all work that Mechanics perform from belt walking to pulley repair, which includes shuttles. The Carrier therefore relies upon Rule 20(a) asserting that by calling Marnich in early before his 3:30 P.M. shift and assigning the shuttle repair work to him, Marnich was merely performing work “continuous with his shift [and] will be given all the overtime connected with that job.”

The Organization thus seeks to distinguish between the shuttle work (the type of work that was needed on an overtime basis on September 6, 1998) and walking belts and loading boats (the type of work the Organization claims was performed by Marnich during the week). According to the Organization, the repair of shuttles is something that Marnich did not perform during the week. Therefore, according to the Organization, straight seniority applies which entitled the Claimant to the work. The Carrier argues, essentially,

that a Mechanic is a Mechanic; the work performed by Marnich on September 6, 1998 was Mechanic's work, which Marnich was qualified to perform; that it assigned shuttle repair to Marnich and by assigning such Mechanic's work to Marnich it followed Rule 20(a) by assigning the overtime work to him that was continuous with his 3:30 P.M. shift that was to start later in the day.

Both arguments make sense. But the burden is on the Organization. There is no evidence in this record to support the Organization's position that there is a recognized distinction for purposes of assigning overtime between walking belts and loading boats as compared to the repair of shuttles and that Marnich did not (or could not) perform the shuttle repair work. That distinction drawn by the Organization is the premise of the Organization's argument. The Carrier disputes that distinction. The distinction drawn by the Organization has not been factually supported. Indeed, this record is devoid of facts. Without a better factually supported premise in the record, the Organization's 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 29th day of December 2003.