

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37318  
Docket No. MW-37116  
04-3-02-3-69

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Maintenance of Way Employees  
**PARTIES TO DISPUTE:** (  
(CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Mr. C. F. Allen for overtime service to perform the work of lighting switch heaters on his assigned territory on January 4, 2000 and instead assigned Mr. D. Taylor [System File H45218099/12(00-0352) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. F. Allen shall now be compensated for four (4) hours' pay at his respective 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.

In this case, the Organization contends that the Agreement was violated on Tuesday, January 4, 2000 when Grand Rapids Foreman D. Taylor was used during the hours of his regular shift assignment to light switch heaters between Grand Rapids and Elmdale, Michigan. The Organization asserts that the Claimant's regular and customary assignment on first shift is to light the switch heaters on the territory in dispute, and therefore, he should have been called in to perform the work on overtime in accordance with Rule 17, Section 1 (a), which states:

**"RULE 17 - PREFERENCE FOR OVERTIME WORK**

**Section 1 – Non-mobile gangs:**

- (a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. (Emphasis added)

The Carrier disagrees, and argues that no overtime service was needed because Foreman Taylor was readily available at the straight time rate of pay to perform the work as part of his regular assignment. The Carrier maintains that it is not required to call an employee for service at the overtime rate of pay under these circumstances and, consequently, there is no merit to the Organization's claim.

At the heart of this dispute is the meaning and interpretation of the "Night Gang Agreement" (Side Letter No. 30) entered into by the parties. The Organization acknowledges that this Agreement authorized the Carrier to assign additional gang forces on the night shift for a limited period of time, with the understanding that their assigned hours would revert back to daylight hours on March 31, 2000. However, the Organization contends that the Agreement was not

signed until February 1, 2000 and was not intended to be applied retroactively. Because the Carrier improperly assigned Foreman Taylor to a night gang before the date of the Agreement, the Organization submits that the Carrier cannot now assert that Foreman Taylor held a bona fide preference to the work performed in the instant case.

The Board finds the Organization's contention to be without merit. As is clearly reflected on the face of the Agreement itself, the effective date of the "Night Gang Agreement" is December 1, 1999. Thus, the night gangs established under that Agreement, including the one to which Foreman Taylor was assigned, were properly assigned as of that date. The work in question was performed on January 4, 2000, well within the time frame of the Agreement.

Concluding as we do that Foreman Taylor was properly working his regularly assigned night shift hours, we find that the Carrier did not violate the Agreement when it assigned Foreman Taylor to light the switch heaters. The Board has held on numerous occasions that the Agreement does not require the Carrier to use employees on an overtime or premium basis when the work involved can properly be performed on a straight time basis. See e.g., Third Division Awards 31782 and 30672. When necessary work can be performed only on overtime, then the senior employee in the required job class may have a valid claim to the work by virtue of his seniority in accordance with Rule 17, Section 1(a). In this case, however, there is no evidence that the Agreement required the Carrier to use the Claimant on an overtime basis when the work involved was properly performed on a straight time basis. Accordingly, the claim must be denied.

AWARD

Claim denied.

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**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 21st day of December 2004.**