

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39027
Docket No. MW-37779
08-3-NRAB-00003-030126
(03-3-126)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Operator J. Gonyon to perform overtime service (operate ballast regulator) on the Detroit Subdivision on September 15, 2001 and instead assigned Foreman R. McLaughlin [System File H45317901/12(02-0021) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Gonyon shall now be compensated for sixteen (16) hours' pay at the Class 'A' Operator'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.

Careful review of the contents of the parties' two Submissions reveals significant conflicts. The Carrier denied the claim on the basis of a handwritten statement from Roadmaster M. A. Koelsch to the effect that the Claimant was asked to work the overtime opportunity on September 15, 2001, but declined. According to the Carrier's Submission, the claim was discussed in conference on April 24, 2002 during which the Carrier asserts that the Organization did not provide any additional information or evidence that would cause the Carrier to deviate from its previous denial.

According to the Organization's Submission, the conference was held on April 17, 2002 during which the Organization presented statements from both the Claimant and Foreman R. D. McLaughlin. According to the Claimant's statement, he was not asked by the Roadmaster to work on September 15, 2001.

The statements allegedly presented by the Organization at the conference are contained in the Organization's Submission. They are not in the Carrier's Submission.

Notwithstanding the foregoing evidentiary dispute, even if we accept the two statements proffered by the Organization as having been properly exchanged during the development of the record on the property, we nevertheless are confronted with a conflict of material fact that was not resolved in the on-property record: Did the Claimant decline, or did he not decline, the overtime opportunity? Our role is essentially appellate in nature and does not permit us to resolve such evidentiary conflicts. When, as here, we are confronted with such irreconcilable conflicts of material fact, we have no choice but to declare that the Organization's burden of proof has not been satisfied. As a result, we must deny the claim.

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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 22nd day of April 2008.