

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39300
Docket No. MW-38290
08-3-NRAB-00003-040165
(04-3-165)

The Third Division consisted of the regular members and in addition Referee Susan R. Brown when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Utah Division District Truck Operator J. Chatwin, Jr. to overtime service (operate truck for salting) in the Roper Yard, Salt Lake City, Utah on February 2, 2003 and instead assigned System Rail and Tie Inspector S. Drew (System File J-0335-52/1358744).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Chatwin, Jr. shall now ‘. . . be allowed eight (8) hours of time and one-half rate of pay at the Group 15 class (d) truck operators rate of pay as compensation for the inappropriate loss of work opportunity suffered on February 2, 2003.’”

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.

This claim arises from a snow storm that occurred in Salt Lake City, Utah, on February 2, 2003. The Claimant, a Truck Operator, was assigned overtime snow removal at the Roper Yard, using the truck he normally drove. At the same time, a System Tie and Rail Inspector was assigned plowing and salting with a dump truck outfitted with a new piece of equipment, a salter. The Claimant finished his work after four hours and was sent home. The Inspector continued to work additional hours.

The Organization claims a violation of Rule 26 – WORK WEEK which reads, in relevant part, as follows:

“(h) WORK ON UNASSIGNED DAYS - Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.”

The two employees were assigned simultaneously; one job lasted longer than the other. The Claimant was assigned to use the very truck he used in the normal course of his job, as contemplated by Rule 26(h). The Organization has shown no contractual support for the right of the Claimant subsequently to displace a worker, even on overtime, who had already been assigned to another piece of equipment. Moreover, there is no evidence that the Claimant used the dump truck driven by the Inspector in the normal course of his job or had ever operated the salt spreader attached to that truck.

The Third Division Awards quoted by the Organization to support its claims (3822, 23073, and 28500) can be distinguished from the current case. In each of those Awards, the claimants were not assigned any overtime at all; the work was assigned to someone else. Here, the Claimant was assigned in accordance with Rule 26(h) and nothing in the Agreement required the Carrier to allow him to displace the Inspector when the Claimant's assignment was finished. See Third Division Awards 24235, 24519, and 27090, among numerous others.

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 September 2008.