

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39307
Docket No. MW-37897
08-3-NRAB-00003-030284
(03-3-284)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn 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 Messrs. J. Roland and M. Rawlins for basic force work on their Seniority District in connection with overtime service performed at a derailment on the Coal Run Subdivision on December 3, 2001 [System Files G33321302/12(02-0159) and G33320802/12(02-0160) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Roland and M. Rawlins shall now each be compensated for eight (8) hours' pay at their respective time and one-half rates of pay and for eleven (11) hours' pay at their respective double time 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.

Claimant M. Rawlins holds seniority as a Foreman on the Coal Run Subdivision, Big Sandy Division. On the date in question, he was assigned and working as an Assistant Foreman on Gang 5C33 headquartered at Shelby, Kentucky. Claimant J. Roland holds seniority as a Machine Operator on the Coal Run Subdivision, and was assigned and working as such on Gang 6C43 headquartered at Shelby. Gangs 5C33 and 6C43 are basic forces that perform daily routine work on the Coal Run Subdivision.

On December 3, 2001, the Carrier required the overtime services of several Track Subdepartment employees to perform track repairs following a derailment near Pikeville, Kentucky, on the Coal Run Subdivision. The Carrier called and assigned regional gang members, Welders, and basic gang employees junior to the Claimants to perform work, that was within the Trackman class. Those employees each expended eight hours at the time and one-half rate and 11 hours at the double time rate on the work. On that date, Claimant Rawlins worked 5.5 overtime hours as Assistant Foreman providing flag protection for a tie pickup unit on the Big Sandy Subdivision, and Claimant Roland worked 3.5 overtime hours as a Track Foreman.

The Organization contends that the Carrier violated Rule 17, by failing to call the Claimants for the work, and seeks as a remedy that the Claimants be paid the eight hours at time and one-half and 11 hours at double time that was worked by the other employees.

Rule 17 – PREFERENCE FOR OVERTIME WORK reads, in relevant part, as follows:

“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.

- (b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority, in the required job class."

The Organization contends that the disputed work was routine track maintenance that is typically performed by basic track forces such as the ones to which the Claimants were assigned, and that they therefore should have had preference for the work in accordance with their seniority. However, the Carrier asserted without refutation that the derailment presented an emergency situation, and indeed, the Organization did not challenge the Carrier's assignment of employees other than the Claimants to perform the emergency track repair work on straight time. In this case, the Carrier merely assigned the employees who had performed the emergency work on straight time to continue that work on overtime. The Claimants object only to the Carrier's failure to call them to continue the emergency repairs on overtime.

The Board finds persuasive the Carrier's defense that both Claimants were unavailable for the disputed overtime work. The Carrier established that the Claimants worked overtime on their regular assignments on both the date in question and the following date. The Carrier asserted in its declination of the claim that the Claimants had worked overtime on their regular assignments, and the Organization did not dispute this. Although the Carrier did not present supporting documentation in the course of processing the claim on the property, the Claimants were in as good a position as the Carrier to know their work schedules on those dates. Indeed, the Organization did not then and does not now dispute the Claimants' overtime hours. Therefore, the Board finds that the Carrier established that the Claimants worked overtime on their regular assignments on the date in question.

Once the Carrier has proved that the Claimants were working elsewhere on overtime when the disputed emergency work was performed, the logical conclusion is that they could not have performed the track work at the derailment site at the same time. It therefore falls to the Organization to demonstrate that the Claimants were somehow available to perform the disputed work. The Organization failed to do so. Accordingly, the Board finds that the Carrier did not violate the Agreement by failing to call the Claimants to perform the disputed overtime service.

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.