

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41284
Docket No. MW-39850
12-3-NRAB-00003-060673**

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

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Mississippi Export Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to assign Mr. H. Green to perform scheduled overtime service on November 11, 2005 and instead assigned junior employee R. Robinson (System File C121405.0).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant H. Green shall now ‘. . . be allowed twelve (12) hours of pay at the respective time and one-half rate.’”

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 facts in this case are largely undisputed. The Claimant, at the time of this claim, was regularly assigned as a Machine Operator headquartered at Moss Point, Mississippi. His assigned hours were 6:00 A.M. to 4:00 P.M. Monday through Thursday. His designated rest days were Friday, Saturday, and Sunday.

The Carrier had scheduled 12 hours of overtime work on the draw bridge at Moss Point, to begin at 7:00 P.M. on Friday, November 11, 2005 and conclude at 7:00 A.M. on Saturday. Supervisor of Maintenance Operations K. Harrison asked Section Foreman H. Johnson if he wanted to work the overtime, or if one of his crew would be interested. Not wanting to work the overtime himself, Johnson offered the work to the Claimant. The Claimant, because it was overnight work, declined it in order to take care of his disabled wife. Foreman Johnson then offered the work to R. Robinson, the next senior available employee. Robinson accepted the assignment.

Later, after arranging for a caregiver to stay with his wife, the Claimant informed Foreman Johnson that he could work the overtime shift. According to the Organization, the Claimant notified Johnson before the end of his shift on Thursday. The Carrier avers that it was not until after 7:00 P.M. on Friday that the Claimant told Johnson that he was available.

We do not find it relevant whether the Claimant told the Foreman on Thursday or on Friday that he would be available for the work in question. What is significant is the fact that the overtime was offered to another employee and was accepted by him after the Claimant turned it down. At that point, the work belonged to Robinson.

The Board finds that the Carrier properly offered the overtime work to the Claimant and he declined it. Once the work was accepted by the next senior employee, the Claimant's declination operated as a forfeiture of his right to claim it.

There is no evidence in the record to suggest that the Claimant asked if he could defer his decision until he could determine if a caregiver for his wife would be available. The Carrier had the right to act upon the Claimant's rejection of the work opportunity. The Organization makes no argument that Robinson was not the proper employee to perform the work in question in light of the Claimant's decision to decline it. It would be impossible for the Carrier to properly manage its workforce if employees were permitted to decline work and thereafter decide to accept it after it had been assigned to others. Had the Carrier taken the work away from Robinson and reassigned it to the Claimant, the Board has no doubt that we would then be entertaining a claim from Robinson that the work in question was improperly taken away from him. Given the record evidence before the Board, the instant 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 28th day of March 2012.