

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21090  
Docket Number MW-21181

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Board of Trustees of the Galveston Wharves

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned junior Truck Driver A. Butler for overtime service on March 16, 1974 instead of assigning Truck Driver W. B. Brown who was senior, available and willing to perform that service (System File 700-48).

(2) Truck Driver W. B. Brown be allowed nine (9) hours of pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: Claimant is regularly assigned as truck and tractor driver, Monday through Friday.

Although Claimant was the senior available truck driver on Saturday, March 16, 1974, Carrier called a junior employee to perform nine (9) hours of overtime service.

The Organization cites Article 4, Rule 1:

"Right accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company as hereinafter provided."

and cites Awards which hold that said language contractually entitled Claimant to the overtime in question.

On the property, Carrier defended its failure to call Claimant on the day in question because, it asserts, he had reported to the Truck Dispatcher that he did not desire to work any overtime "...at all that week" or "over the weekend."

Claimant denies that he had so advised the Carrier. He states that he was asked to work on Friday, March 15, 1974, but was able to find alternate coverage. However, he claims that he made no comments regarding March 16, 1974.

It would appear that Claimant had made some statement to Carrier regarding a desire not to work overtime during the week because the record shows that two junior employees had worked considerable amounts of overtime during that time, without objection by Claimant. But, that factor is not

dispositive. Moreover, the fact that Carrier may have contacted Grievant to advise him that it had secured coverage (a senior employee) for March 16, 1974 fails to dispose of the issue.

It appears that this dispute is resolved based upon an evaluation of the evidence of record and a determination of which version we credit. We have noted that in the handling on the property, Carrier presented no statements from the Truck Dispatcher, but merely relied upon assertions as to what occurred. The record does contain a direct statement from the Claimant. The Carrier's position here would appear to be in the nature of an affirmative defense, and accordingly, we feel that a conflict is properly resolved in Claimant's favor.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1976.