

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24067
Docket Number MW-24089

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Machine Operator Leroy Stroman was not called to perform overtime service on his assigned position (Ballast Regulator, Section Force 8565) on June 15, 1979 and the Carrier instead called and used a junior employe (C. Nichols) assigned to Section Force 8565 for such service (System File C-4(36)-LS/12-27(79-51) HS).

(2) Machine Operator Leroy Stroman be allowed ten (10) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimant was regularly assigned to the position of ballast regulator, with rest days of Friday and Saturday. On Friday, June 15, 1979 it was necessary for Carrier to use the ballast regulator which Claimant normally operated from Monday through Thursday. Carrier did not use Claimant for the work but instead used Trackman Nichols, who was qualified to operate the equipment, for the ten hours of overtime work.

Claimant maintains that he was not asked to perform the overtime work, which he was available for and willing to perform. Carrier's failure to assign Claimant to the work on the Friday was a clear violation of the Agreement, and in particular Rules 6, 8 and 28, according to Petitioner.

The Carrier points out that its version of the events is reliable and its assignment of the work to the junior employe was correct under the circumstances; those circumstances were that Claimant was asked by his Foreman to work the overtime and he responded that he did not want to do so.

This dispute turns on the factual issue of whether or not the Claimant was offered the overtime work for the day in question. The record shows that there is clearly a sharp conflict between the events as perceived by Claimant and the Foreman. There is no question but that Claimant was entitled to the work, if he chose to accept the assignment, as provided by the Rules. Since the conflict in testimony goes to the heart of this dispute, the Board cannot make a determination on the merits without the facts being clearly before it. It has long been held that Boards such as this, in an appellate posture, cannot resolve conflicts in evidence. We have no alternative but to dismiss the Claim.

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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.

