

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25104
Docket Number MW-23976

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation (former Lehigh Valley
(Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Truck Driver-Trackman Stephen Gober instead of Welder Helper Wilbur Wagner to perform overtime service as a welder helper on May 22, 1979 at Allentown Yard (System Docket No. LV-174).

(2) Because of the aforesaid violation, Welder Helper Wilbur Wagner be allowed eight (8) hours of pay at his time and one-half rate and one-half (1/2) hour of pay at his double time rate."

OPINION OF BOARD: Claimant is a Welder Helper who asserts that Carrier erred in making a single shift overtime assignment of allegedly Helper work to a Truck Driver-Trackman rather than to Claimant.

While the underlying facts are in some dispute, we find credible on the limited record before us, the following:

1. The assigned Truck Driver-Trackman did function as a Welder Helper on the overtime shift in question. The Organization so claimed repeatedly, in the written documents which constitute the "on the property" record in this case. While this essential fact is challenged in Carrier's ex parte submission to the Board, there is no evidence on the record that Carrier contested the Organization's claim in this regard during proceedings in this case "on the property". Had such been done the issue might, of course, have been subjected to debate on the record or submission of record evidence.

2. While Claimant did decline assignment as a Welder on the overtime shift in question (asserting lack of competence and qualifications), Claimant was available for assignment and willing to work as a Welder Helper on the shift. While there is dispute over this issue on the record, our assessment of the weight and significance of the admittedly meager conflicting available evidence compels this findings.

3. Contrary to the assertion of the Carrier, it seems evident from the record that the Organization did claim, during processing of this case on the property that Carrier's assignment of overtime to the Truck Driver-Trackman rather than Claimant violated seniority provisions of the Agreement between the parties. We find that the very nature of the initial grievance claim in this case, as well as the Organization's subsequent written reference on the property to at least some of the seniority provisions of the Agreement, places relevant seniority rules appropriately in issue here.

In is undisputed that Claimant does hold seniority rights within the seniority group designated as Welder Helper. It also seems clear, and is largely uncontroverted, that by virtue of practice, precedent, and the thrust of the language itself, seniority provisions such as Rule No. 2(b) in the Agreement between the parties to this case requires (absent unusual circumstances) the application of the seniority principle within a group in the assignment of overtime for work normally done by members of that group.

In accord with the above, the claim in this case is sustained as presented.

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 Employes involved in this dispute are respectively Carrier and Employes 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

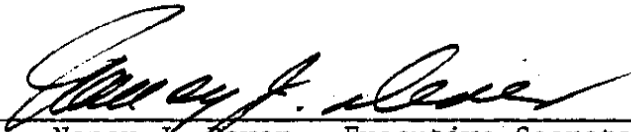
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.

