

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26252
Docket Number MW-25982

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Western Lines)

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

(1) The Carrier violated the Agreement when it assigned junior Welder L. C. Gutierrez to perform overtime service on September 26, 1982 instead of calling and using Welder P. G. Morales, who was senior, available and willing to perform that service (Carrier's File MofW 125-344).

(2) Welder P. G. Morales shall be allowed fourteen (14) 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 employed by Carrier as a Welder assigned to the System Track Welding Subdepartment with headquarters at Tehachapi, California. Welder Gutierrez was also assigned to the same group and both men had rest days on Saturdays and Sundays. Claimant was more senior than Gutierrez. On Sunday, September 26, 1982, a derailment occurred at Caliente which required the maintenance forces at Tehachapi to repair the track and roadbed damage. Arc welding work was required at the derailment site. The truck regularly assigned to Gutierrez had arc welding equipment on it while Claimant's truck did not. Claimant, though available, was not called and Gutierrez was called out to perform the required work. Gutierrez received 14 hours pay at the overtime rate for the work, triggering the dispute herein.

Claimant alleged that he called the Acting Relief District Manager who had been in charge of the repairs at the derailment site and asked why, though available, he had not been called out. According to Claimant he was told that the Relief District Manager had not known that he was the senior Welder.

The Organization argues that Claimant was entitled to the work in question in preference to a junior employee, and cites several Awards in support of that position. In addition, it is urged that Carrier's assertion of an emergency is not supported by any evidence of that circumstance. In that context the Organization notes that Carrier's reliance on Rule 25(b) is misplaced since the Carrier is entitled to use the most readily available employee only in connection with an emergency. In addition it is maintained that Claimant was readily available to perform the work but was not called.

Carrier asserts that there are no rules requiring Carrier to call Welders for overtime in accordance with their seniority. Further, Carrier states that the assignment of work is its prerogative as an inherent management right, so long as not restricted by express provisions of the Labor Agreement. It is argued also that seniority does not in itself convey any rights that are not provided in the Agreement. In addition, Carrier notes that there had indeed been an emergency on the Sunday in question and thus Carrier had broader authority than under normal circumstances. As an additional aspect of the project, Carrier states that arc welding was required and Gutierrez was the employee regularly assigned to perform that type of work, while Claimant was not.

Whether or not there was an emergency, the critical issue in this matter is whether Claimant's seniority rights were ignored and abused by Carrier's selection of Gutierrez to perform the overtime work. An examination of Third Division Award 24240, involving the same Organization as that herein as well as Carrier on its T&L Lines, is useful. In that dispute the issue was the applicability of the seniority provisions of the Agreement to the assignment of overtime. In that case the Board found that under ordinary circumstances the rules would have required that the senior employee be awarded the overtime in question. In this dispute no such rule provisions exist. There is nothing in either Rule 25 or Rule 28 (or in any other rule) which entitles an employee such as Claimant herein to overtime preference by virtue of seniority order. While this Board has long recognized the importance of seniority (Third Division Awards 18686, 13566 and a host of others), seniority rights must be specified in the Agreement in order to be protected. As we said in Third Division Award 18091:

"It is axiomatic that seniority is governed strictly by the provisions in the Agreement. Employees are entitled to no more than the contract authorizes. In the absence of any specific seniority rights, Carrier has the sole prerogative to assign employees when and where needed. The extent and limitation of the employee's rights are to be determined from the language in the negotiated Agreement."

From the foregoing, it is apparent that there is no rule support for the Organization's position. Therefore, the Claim must be denied.

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

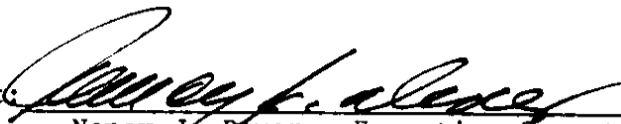
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.