

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Norfolk and Western Railway Company  
(Formerly The Pittsburgh and West Virginia Railway Company)

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

(1) The Carrier violated the Agreement when it assigned junior Carpenter C. L. Gardner, Jr. to perform overtime service on August 13, 14, 15, 16, 17, 20, 21, 22, 23, 24 and 27, 1984 instead of using Carpenter G. L. Whitaker who was senior, available and willing to perform that service (Carrier's File MW-ROK-84-12).

(2) Carpenter G. L. Whitaker shall be allowed eleven (11) hours of pay at his 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant is employed as a carpenter by Carrier, in its Bridge and Building Department. Beginning on August 13, 1984, Carrier used an outside contractor to perform bridge repair work at West Liberty, Pennsylvania. In connection with the repair work, Carrier assigned Carpenter Gardner to work as a flagman; the assignment included overtime work. The Organization thereafter filed a claim on Claimant's behalf, challenging the assignment of such overtime to Carpenter Gardner, who had less seniority than Claimant.

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88-3-85-3-613

This Board has reviewed the evidence in this case, and we find that the Organization has not met its burden of proof. The Organization has not presented sufficient evidence to support its argument that Claimant should have been assigned the overtime. There is no evidence that the Carrier acted in such a way as to avoid the seniority provisions of the Agreement. Therefore, the claim must be denied.

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 17th day of May 1988.