

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned a junior welder foreman, welder and welder helper to perform overtime service on September 8 and 9, 1984, instead of calling and using Welder Foreman N. Jacobs, Welder C. Watts and Welder Helper T. Weaver, who were senior, available and willing to perform that service (System Docket CR-1303).

(2) Welder Foreman N. Jacobs, Welder C. Watts and Welder Helper T. Weaver shall each be allowed twenty-two (22) hours of pay at their respective 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.

Welding Gangs Nos. 48 and 49 were regularly assigned in welding work on a Monday to Friday work week. Welding Gang No. 49 was assigned to welding work on Saturday and Sunday, September 8 and 9, 1984, while the three members of Welding Gang No. 48, the Claimants herein, were not so assigned. No question was raised concerning the qualifications of either Gang to perform the overtime work. Claimants are senior to all members of Welding Gang No. 49.

The Organization argues that the Claimants were improperly denied the opportunity for overtime work based on Rule 17 which reads as follows:

RULE 17 - PREFERENCE FOR OVERTIME WORK

"Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

The Carrier argues that there was no violation of Rule 17, on the following bases:

1. Welding Gang No. 49 performed welding duties on the Monday through Friday of the week preceding the overtime, while Welding Gang No. 48 performed such work on Monday through Thursday, but not on Friday, owing to the inoperability of its equipment.

2. Welding Gang No. 48 did not "check in" with the Supervisor on Friday as to weekend work, while Welding Gang No. 49 did so.

As to the Carrier's first argument, Rule 17 refers to work "ordinarily and customarily performed" during the course of the "work week or day (emphasis added)." Both Gangs obviously met this requirement.

As to the second argument, the Carrier alleges a practice or procedure of requiring Gangs to "check in" on Friday in order to be eligible for overtime. No evidence of such practice or procedure was provided, certainly not to the degree required to defeat the clear language of Rule 17. The Rule places an obligation on the Carrier in its mandatory statement that employees "will . . . be given preference . . . in the order of their seniority." There was no showing as to any attempt to assign Welding Gang No. 48 or to determine that the Claimants were unavailable.

Consistent with its position in such matters, the Carrier also argues that, if the Claim is sustained, the punitive rate of pay is improper. However, the record in this dispute fails to show that the Carrier took exception to the Claim for punitive pay during the Claims handling procedure on the property. On this basis, the Board must sustain the Claim as presented.

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 22nd day of September 1988.