

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 foreman to perform overtime service on November 18, 1984 instead of calling and using Foreman R. J. Jacques who was senior, available and willing to perform that service (System Docket CR-1407).

(2) Foreman R. J. Jacques shall be allowed seven (7) 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 employees involved in this dispute are respectively carrier and employees 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 an MW Track Foreman. On November 18, 1984, the Carrier called a Foreman junior to the Claimant for an overtime assignment piloting a tamper machine. The Organization argues that the Claimant was improperly denied this overtime work. The Organization cites 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 Claimant had been out of service from 1981 until October 22, 1984. He did not take and pass an examination on the Book of Rules and Timetable Special Instruction until November 28, 1984, and at that time had not yet been re-qualified on track physical characteristics. The Carrier contends that, as of November 18, the Claimant was not qualified to be called for the overtime work. The Carrier refers to its Transportation Department Rule 801 which states,

"Track car drivers must satisfactorily pass the required annual examination covering rules." Whether the Claimant was permitted to perform piloting work during the brief period following his return to work and before the overtime assignment was not clearly established.

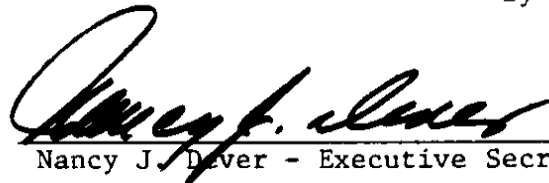
The Board finds that the Carrier properly found the Claimant not "qualified", pending his completion of the rules tests and reacquaintance with physical characteristics. The Organization argues that, as between an Agreement rule and an operating Rule, the former must prevail. Here, however, the Board finds no such conflict. Rule 17 applies only to "qualified" employees.

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 27th day of October 1988.