

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned junior Grinder A. Guerrero to perform overtime service on March 9, 1985, instead of calling and using Grinder A. Medina, who was senior, available and willing to perform that service (System File M-134/013-210-35).

(2) Grinder A. Medina shall be allowed eight (8) 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.

On March 9, 1985, a Grinder junior to Claimant was called for eight hours' service on his rest day to work on a territory other than his assigned territory. This service was necessitated by a derailment. The Carrier acknowledges that Claimant should have been called for this service in lieu of the junior employee. (It should be noted this conclusion is based upon the Carrier's statement in its Ex Parte Submission that "The Carrier recognizes that the Claimant was no doubt denied work," and not upon its offer to settle the claim.) The record shows that Claimant would have been paid at the overtime rate had he worked.

The only issue before this Board is whether or not Claimant should be compensated at the straight time rate of pay or at overtime. The Organization argues he should be made whole and compensated as if he had been properly called. The Carrier takes the position the overtime rate is punitive and should only be paid to the employee who actually performed service. Both cite numerous Awards in support of their respective positions.

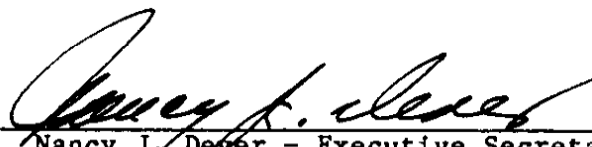
We addressed this issue extensively in Third Division Award 26508. Relying upon Third Division Awards 21767 and 25601, we concluded that payment at the time and one-half rate was appropriate. Since then, Third Division Award 27593, involving the parties herein, held:

"The Carrier also disputes the propriety of payment at the punitive rate. In keeping with the predominant view of this Division and in the absence of demonstrated practice to the contrary on the property, the Claim will be sustained 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 31st day of July 1989.