

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned junior Truck Driver W. Pettaway instead of Mr. J. Hunt to perform overtime service on June 10, 18, 23, 24, 26, 30, July 1, 2, 3, 7, 8, 14, 15, 21 and 22, 1986 (System File NEC-BMWE-SD-1690).

(2) As a consequence of the aforesaid violation, Mr. James Hunt shall be allowed fifty-three (53) hours of pay at the truck driver's time and one-half overtime 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.

This dispute is based on the allegation that certain overtime work, transporting train crews from the 30th Street Station to various locations in the Southern District was performed by a truck driver junior to Claimant. On the fifteen days specified in the Claim, it is argued by the Organization that Claimant should have been assigned to the overtime work in accordance with Rule 55(a).

Carrier maintains that the work complained of simply did not occur. For that reason Carrier argues initially that there is an irreconcilable conflict in fact in this matter and the Claim should be dismissed.

An examination of the record reveals one document in support of Claimant's version of the alleged violation. That statement, signed by the junior truck driver claims that he did indeed perform the disputed overtime on nine of the fifteen days specified in the Claim. On the other hand, Carrier asserts that its records, which were made available to the Organization, show that on at least eight of the claimed days the junior driver was engaged in normal track maintenance activities and not the claimed crew transporting activity which was at the heart of this matter.

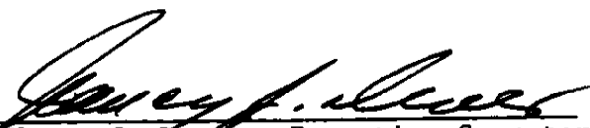
It is quite clear that this Board has neither the authority nor the competence to resolve factual disputes such as that revealed above. Since the evidentiary question is the first essential element in this dispute, we cannot apply the Agreement to indeterminate facts (see Third Division Awards 24418, 21531, 21436, and 21423 among many others). We have no choice but to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1990.