

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10301) that:

1. Carrier violated the provisions of the current Clerks' Agreement at San Bernardino, California, on October 8, 1987, when it failed and/or refused to call Mr. R. D. Little to work Extra Crew Clerk, and

2. Claimant shall now be compensated eight (8) hours' pay at the pro rata rate of Extra Crew Clerk for October 8, 1987, in addition to any other compensation he may have received for this day."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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.

Based upon the evidence developed on the property, at the relevant time Claimant held Relief Clerk Position No. 9430 at San Bernardino, California, with Wednesday and Thursday as designated rest days. On Thursday, October 8, 1987, the Carrier determined there was a need for overtime for a Crew Clerk, work which Claimant performed during his regularly assigned hours. The Carrier gave the work to a regularly assigned junior employee. However, Claimant was not the most senior available Crew Clerk.

By assigning the overtime work to a junior employee when other more senior qualified Clerks were available, the Carrier did not comply with Rule 32-G which states:

"In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

- (1) Occupant of position to have prior rights to overtime work on his position.
- (2) If more than one employee is regularly assigned to class of work, the senior available employee in that class of work will have prior rights to the overtime work.
- (3) If none of the employees are available as provided in (1) and (2) above, the senior available qualified employee at the point who has served notice in writing of his desire will then have prior rights to the overtime work."

Other reasons advanced by the Carrier concerning the assignment were not made on the property and therefore cannot be considered.

The fact that Claimant was not the senior most available employee does not defeat the claim. See Third Division Award 18557:


"...[O]ne of a group entitled to perform the work may prosecute a claim even if there be others having a preference to it. The essence of the claim by the Organization is for Rule violation and the penalty Claim is merely incidental to it. The fact that another employee may have a better right to make the Claim is of no concern to Carrier and does not relieve Carrier of the violation and penalty arising therefrom."

See also, Third Division Awards 19067, 20090, 25860 and 25918.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.