

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29506
Docket No. MW-29894
93-3-91-3-268

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy 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 Agreement was violated when the Carrier assigned junior Trackman R. Acosta instead of Vehicle Operator C. L. Garrison to perform overtime work operating the fuel truck on Gang SE 111 on October 6, 7 and 8, 1989 (System Docket MW-1051).

(2) As a consequence of the aforesaid violation, Mr. C. L. Garrison shall be allowed forty-six (46) hours of pay at the vehicle operator's 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 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.

Claimant is a Vehicle Operator assigned to Camp Car Gang SE 111. On the claim dates an employee junior to Claimant, was assigned overtime work. Claimant contends he should have been called to work the overtime.

The Carrier contends that Claimant and the other gang members were asked if they were willing to perform overtime work, and that three employees said they were willing to work. The Carrier contends that Claimant made no response to the offer.

The Claimant furnished a statement alleging that he was not called, and reciting the events which allegedly occurred prior and subsequent to the claim dates. The Carrier furnished a statement from the General Foreman which directly contradicts the Claimant's version of events.

The Board finds that it has been presented with irreconcilable statements of fact by the parties, and that it has neither the authority nor the competence to resolve factual disputes such as this. Under well-established precedents of the Board, the claim must therefore be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.