

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29565
Docket No. MW-29237
93-3-90-3-112

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 Agreement was violated when the Carrier assigned junior employe K. R. Thrush instead of O. McCrobie to perform overtime service at Mohican, Ohio on August 5 and 6, 1988 (System Docket MW-261).

(2) As a consequence of the aforesaid violation, Mr. O. McCrobie shall be allowed sixteen (16) hours of pay at the applicable time and one-half and double time trackman's operator 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 employe 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.

The Claimant, a Trackman, has regularly assigned duty hours ending prior to 10 P.M., Monday through Friday. On Friday, August 4, 1988, the Claimant was granted a personal leave day with pay. At 10 P.M. the same day an employee junior to the Claimant was called for duty in connection with a derailment and worked until 10 A.M. the following day.

The Organization contends that the Claimant's status on personal leave ended with the completion of his regular duty hours, and thus he should have been called for the derailment in place of the junior employee. In support of its position, the Organization relates personal leave to vacation time and cites two Awards as to overtime entitlement for employees completing vacation. Even granted for the sake of argument the relationship of leave days to vacation, the two cited Awards are not applicable here, since they did not concern claimed work on the same day that the vacations ended.

The Board finds it reasonable that an employee granted paid leave for his regular duty hours be considered unavailable for the entire "day" (i.e., 24 hours). The only exception might be if special arrangements were made in advance to the contrary.

Once the junior employee was called for derailment work commencing at 10 P.M., it is further reasonable that he was eligible to complete the work running continuously into the next morning.

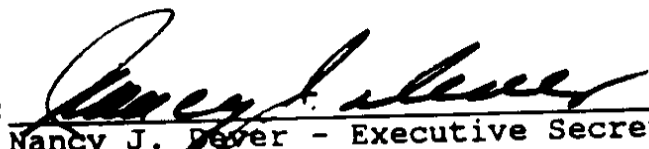
With this conclusion, it is unnecessary to review the contrary contentions as to whether the junior employee worked as and/or was paid as a Repairman or a Trackman.

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 9th day of March 1993.