

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29762
Docket No. MW-29860
93-3-91-3-229

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 Carrier violated the Agreement when it assigned junior Foreman A. J. Hill instead of Foreman J. W. Jones to perform overtime service between Mile Posts 290.2 and 300.4 on November 4, 5, 11 and 12, 1989 (System Dockets MW-1013 and MW-1028).
- (2) As a consequence of the aforesaid violation, Mr. J. W. Jones shall be allowed forty-four (44) 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 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.

In this claim, Claimant, a Track Foreman on the Pittsburgh Division, objected to Carrier's decision to assign a junior Track Foreman to perform weekend overtime work on November 4, 5, 11, and 12, 1989, on the Latrobe Subdivision. The Organization maintains that Claimant was fully qualified, available, and willing to perform the overtime service.

Before this Board, the Organization argues that in accordance with Rule 17, since Claimant and the junior Foreman were both performing ordinary Track Foreman work during the preceding work week, Carrier was obligated to use Claimant to perform the weekend overtime work. Further, the overtime work involved here did not occur continuous with any Track Foreman assignment and thus overtime would not accrue to an employee performing that work during regular hours.

Carrier raises two problems with the Organization's position. First, while the Organization cites a violation of Rules 1 and 17 in its submission, Carrier suggests that the Organization made no mention of these Rules during its handling of the claim on the property. Rather, it referred instead to Rules 4 and 11.

Technically, Carrier is correct in pointing out that Rules 1 and 17 were not specifically cited in documents on the property, but there is evidence of considerable discussion between the parties as to whether the work to be performed was ordinarily performed during the previous week, an issue that goes to heart of Rule 17.

A more serious problem occurs in conjunction with the Organization's failure to establish what work was being performed. In a letter dated April 9, 1990, Carrier wrote:

"Our investigation of this matter revealed that while Foreman Jones did work with the TCOM to some extent while it was operating in the Pittsburgh Division, he was not assigned exclusively to that work. On Fridays, November 3 and 10, 1989, Foreman Jones did not work in support of the TCOM. Rather, he was returned to the subdivision and performed normal duties as a maintenance gang foreman. Foreman Hill, however, did work in conjunction with the TCOM project on Fridays, November 3 and 10, 1989, thus the Saturday and Sunday work was a continuation of the work performed by Mr. Hill on Friday and was rightfully assigned to him pursuant to Rule 17."

This Board can find no probative evidence in the record to support either Carrier's or the Organization's contentions in regard to the type of work the two men performed on the Fridays preceding the weekends or the work done by the junior Foreman on the dates in issue. Since the burden rests with the Organization to provide sufficient proof to support its contentions and since we

Form 1
Page 3

Award No. 29762
Docket No. MW-29860
93-3-91-3-229

are left with an irreconcilable dispute in facts, this claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sb
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.