

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29795  
Docket No. MW-30057  
93-3-91-3-468

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(CSX Transportation, Inc. (former Louisville  
(and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned junior Assistant Foreman G. B. Prater instead of Assistant Foreman D. E. Wilhoit to perform overtime service flagging for the Speno Ballast Cleaner on the Cincinnati Subdivision on June 16 and 17, 1990 [System File 1(36)(90)/12(90-854) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. E. Wilhoit shall be paid twenty-seven (27) hours' pay at his assistant foreman'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 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 question presented in this case is whether Carrier violated Rule 30(g) by assigning Assistant Foreman Prater, who is junior to Claimant on Gang 5C92, to perform certain work at overtime rates on the Gang's regular rest days of Saturday-Sunday,

June 16-17, 1990. The work in question was flagging for the Speno Ballast Cleaner.

Rule 30(g) reads as follows:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The record shows that both Claimant and Assistant Foreman Prater had worked the entire week prior to June 16-17, 1990. During that workweek, Monday-Friday, June 11-15, 1990, Prater's sole assigned responsibility was to perform flagging for the Speno Ballast Cleaner; and Claimant performed no such flagging work during the regular workweek. Nor is it disputed that flagging for a ballast cleaner is not work ordinarily and customarily performed by Claimant during that or any other regular workweek.

For purposes of Rule 30(g), the junior employee who performed the job as his daily assignment during the preceding workweek was the "regular employee," within the meaning of that quoted term in Rule 30(g). See Third Division Awards 29435, 28391, 27090, 28782, 27161 and 26385.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 29th day of September 1993.