

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29855
Docket No. MW-30034
93-3-91-3-438

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
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Carrier violated the Agreement when it assigned Assistant Foreman R. Castaneda and Foreman B. D. Yates to perform overtime service instead of B&B Carpenter S. S. Gibson to watch for and pull drift from the bridge over the Trinity River between Urbana and Goodrich, Texas from May 16 through May 24, 1990 (System File MW-90-101/494-98-A SPE).
- (2) As a consequence of the aforesaid violation, B&B Carpenter S. S. Gibson shall be allowed seventy-three (73) hours of pay at his respective 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 relevant facts of this claim are not in dispute. From May 16 through May 24, 1990, the Carrier found it necessary to remove debris from under the Trinity River Bridge, which was in flood

stage. Carrier assigned a B&B Gang Assistant Foreman under the direction of a Foreman to perform this overtime service. The Organization insists that Claimant, a B&B Carpenter, who has more seniority than the Assistant Foreman, was entitled to be called to perform the overtime work. The work in question was to "watch for and pull driftwood" at the bridge over the Trinity River between Urbana and Goodrich, Texas.

The Claim stated that: "Mr. Gibson is the senior carpenter headquartered in the vicinity and works on the same gang, but was not allowed to perform these carpenter duties. It is our position that by failing to utilize the proper senior employee, S. Gibson, rather than B&B Assistant Foreman R. Castaneda, the Carrier has violated Articles 1, 2, 6, 8 and 41 of the Agreement." The Organization requested that Claimant be given "seventy-three (73) hours of pay at his respective time and one-half." Carrier denied the claim asserting that: "The Trinity River was flooding and it was necessary to have 24-hour coverage for inspection of the bridge and protection against materials that might drift into it. The work referred to in your claim is not reserved exclusively for B&B Carpenters by agreement or past practice. The work at issue has been performed by various employees in the B&B Department as well as the Track Department."

The countervailing arguments between the Parties regarding Scope Rule application to this particular work, which were resolved against the Organization in Third Division Award 24793, are largely irrelevant since they beg the question at issue in this particular case. Here there is no other viable claim except that the overtime work should have been assigned to the most senior available employee under Seniority Rule 2. A host of prior decisions by this Board and other tribunals support the claim. See Third Division Awards 2716, 6136, 19758, 15640, 20120, 24240, 24918, 26537, SBA No. 280, Awards 12, 75 and 110.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 26th day of October 1993.