

Award No. 30225

Docket No. MW-29747

94-3-91-3-102

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Soo Line Railroad Company

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

- (1) The Agreement was violated when the Carrier retained junior Laborers W. Lampson, J. Northagen and S. Smaage instead of senior Laborers B. Adams, R. F. Gibson and F. D. Mehl on the Z-88 Sled Crew from September 15 through 23, 1989 (System File R627.Z88/800-46-B-358).
- (2) As a Consequence of the aforesaid violation, Messrs. B. Adams, R. F. Gibson and F. D. Mehl shall each be allowed six and one-half (6.5) hours of pay at their respective time and one-half rates and they shall be made whole for any vacation or fringe benefit loss suffered."

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 six Laborers on the Z-88 Sled Gang had been advised that their work on the Gang would be completed at the end of the assignment on September 15, 1989. On September 15, the three junior members of the Gang were assigned to ballast spreading work, while the three senior members, the Claimants herein, were assigned to tying up the Gang's equipment. The three senior employees completed their work around the middle of the day and, presumably with the knowledge and consent of their Foreman, left the work location, expecting to move to other positions thereafter in accordance with their seniority rights.

According to the Carrier, at about the same moment the Roadmaster determined that it would be necessary to continue the gang for ballast spreading work. When he returned to advise the senior employees of this (again according to the Carrier), they had already departed. As a result, the Roadmaster retained the three junior employees. They continued to work for an additional week, during which each was assigned six and one-half hours' overtime. The Claim here is for pay for such overtime for the three Claimants.

The Organization expresses doubt as to the timing of the Roadmaster's knowledge of the additional work. In any event, the Organization contends that the Claimants should not suffer based on the Carrier's alleged failure to have knowledge of continuing Gang work. Further, the Organization argues that the Carrier must respect the seniority rights of the Claimants in such circumstances without the necessity of a specific request by the employees.

As to one of the Claimants (Adams), the Organization presented a statement from him alleging that on September 15 he had requested to be assigned to ballast spreading work and was refused and that he had been closely available to the Roadmaster at 2 P.M. and could then have been advised of the need for further assignment.

There may well have been a Carrier failure here to anticipate in timely fashion the need for additional work by the Z-88 Sled Gang. On the other hand, there appears to have been a genuine attempt to notify the senior employees, who had departed early. There is no contention that the senior employees displaced into less advantageous positions. As to Adams, however, the Board has no basis to reject his account of his availability, and in his instance the Claim for the overtime pay will be sustained. The Claim as to the other two Claimants will be denied, absent any showing that they were or would have wished to be available to continue with the Gang.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.