

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30529
Docket No. MW-30108
94-3-91-3-533

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 Employees
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when the Carrier used junior Special Machine Operator T. D. Brown, instead of assigning Special Machine Operator T. R. Nagle, to operate Jackson Tamper 6500 from 5:00 P.M. to 8:30 P.M. on May 10, 1990 and to operate Jackson Tamper 6000 from 7:00 A.M. to 9:30 P.M. on May 11, 1990 (System File C #30-90/800-40-E-78 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, Special Machine Operator T. R. Nagle shall be allowed seventeen and one-half (17-1/2) hours' pay at the time and one-half rate of pay for special machine operators."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute concerns overtime work involving use of the Jackson Tamper 6000 on May 10 and/or 11, 1990.

The Claimant is a Special Machine Operator qualified to operate the Jackson Tamper 6000 and is senior to the employee who performed the work. The Claimant contends that he made himself available for the work by informing supervision and should have been assigned to the overtime work. To the contrary, a statement by the Project Roadmaster was included in the on-property handling to the effect that the Claimant and others were canvassed for the overtime work and that the Claimant did not accept the proffered overtime assignment.

In the face of these directly contrasting positions, the Board is without sufficient guidance to make a decision on the merits of the case. It follows that a dismissal Award is appropriate.

As a result, the Board need not resolve the procedural argument as to whether the claim was timely "presented." In addition, there is no need to comment on the Organization's urging that, if the claim for May 10 is found to be untimely, the Board should address itself solely to the alleged violation of May 11.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.