

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30635
Docket No. MW-29323
94-3-90-3-230

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employee R. W. Ferguson instead of B&B Mechanic R. H. Crose to perform overtime service at the Red River Bridge in Alexandria, Louisiana on February 25 and 26, 1989 (Carrier's File 890219 MPR).
- (2) As a consequence of the aforesaid violation, Mr. R. H. Crose shall be allowed twenty-one (21) hours of pay at the 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 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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim protests the undisputed fact that the Carrier utilized an employee who was junior in seniority to the Claimant to perform overtime work. There can also be no serious dispute that, but for a question as to his availability, the Claimant was entitled to be assigned to the work in question prior to the junior employee.

Indeed, the central dispute revolves around whether the Claimant was available. Apparently the Claimant had been contacted, asked, and agreed to work overtime on February 25. The foreman agreed to pick him up at 4:00 A.M. According to a statement by the foreman, he arrived at the Claimant's house one-half hour late. He also indicated that when he arrived, the house was dark. He honked the horn and waited about five minutes and left. It was then the junior man was called. The Claimant indicated in his statement that he was awake and ready but the foreman never showed up.

It is the opinion of the Board that, with respect to the first day of overtime, there is an irreconcilable dispute of fact. Thus, the facts necessary to sustain the claim for this date are not present. The state of the record is different, however, for the second day. The Claimant's statement indicates that the foreman told him he did not try to call him for February 26. It is notable that there is no first-hand statement in the record from the foreman refuting this claim. As such, we are left to conclude that no attempt was made to contact the Claimant on the second day. In view of this, the Carrier erred, and the Claimant was disadvantaged by its failure to call him for overtime work to which he was entitled.

In view of the foregoing, the claim is sustained at the overtime rate for the hours expended by the junior employee on February 26, 1989.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.