

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30672
Docket No. MW-28516
95-3-88-3-347

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Duluth, Missabe & Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior B&B Mechanic M. LeBlanc instead of B&B Mechanic R. Lilliberg to work from 11:00 P.M. on May 19, 1987 until 7:00 A.M., on May 20, 1987 (Claim No. 24-87).
- (2) As a consequence of the aforesaid violation, B&B Mechanic R. Lilliberg shall be allowed eight (8) hours' pay at the B&B Mechanic's 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 employees 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.

Claimant and LeBlanc were furloughed B&B Mechanics at the time of the events precipitating this dispute. Claimant was the senior of the two employees. On May 19, 1987, Claimant was called to work an unassigned position on the 7:00 A.M. to 3:30 P.M. shift. Mr. LeBlanc worked an unassigned position on the 11:00 P.M. to 7:00 A.M. shift beginning on that same date. Both employees were compensated at the straight time rate.

The Organization contends that Claimant should have been used for the 11:00 P.M. to 7:00 A.M. work because he had greater seniority. Carrier argues that, had Claimant covered the 11:00 P.M. to 7:00 A.M. assignment, he would have been entitled to the time-and-one-half rate. Carrier maintains that the Agreement does not require the use of employees on an overtime or premium pay basis when the work can be done at straight time.

Our examination of the record in its entirety reveals no rule of the Agreement which requires the Carrier to assign the disputed work to the Claimant under the circumstances set forth in this case. All other matters being equal, the work performed on the 11:00 P.M. to 7:00 A.M. shift should have been assigned to the senior employee. However, in this dispute the employee who performed the work could do so at straight time. Therefore all other matters were not equal. This Board has held on numerous occasions that the Agreement does not require the Carrier to use employees on an overtime or premium basis when the work involved can properly be performed on a straight time basis. See, Third Division Awards 4969, 10518, 13365, 14048. When necessary work can be performed only on overtime hours, the senior available employee then has a valid claim to the work by virtue of his seniority. But where, as here, Carrier can get the work done at straight time rates without violating a provision of the Agreement, it is within its province to do so. The cases cited by the Organization do not refute this central point and are clearly distinguishable from the matter at hand.

AWARD

Claim denied.

O R D E R

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 31st day of January 1995.