

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30772
Docket No. MW-29995
95-3-91-3-392

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned junior employe K. D. Hunt to work overtime on Timbering and Surface Gang 5A83 near Patty, Tennessee rather than Assistant Foreman S. Lapole on March 17 and 18, 1990 [System File 5(3)(90)/12(90-704) LNR].

(2) As a consequence of the violation referred to in the above, Claimant Lapole shall be allowed eight and one-half (8.5) hours at this respective time and one-half rate for March 17, 1990 and eight (8) hours at his respective time and one-half rate for March 18, 1990."

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.

Claimant was the Assistant Foreman of Tie Gang 5A83 headquartered at Patty, Tennessee. That gang had a 10 hour/4 day schedule (Monday through Thursday).

The Carrier decided to work the Surfacing Unit of the Tie Gang on the gang's scheduled rest days, Friday through Sunday, March

16-19, 1990. According to the Organization, Foreman G. W. Harrod told Claimant that he was going to work the overtime and would not permit Claimant to work; Harrod worked 16 hours on March 17 and 18, 1990; and K. D. Hunt, who was assigned to the Chatsworth Section, was assigned to work Claimant's position instead of Claimant. The Organization asserts that in the absence of the Foreman, Claimant performs this work and should not have been denied overtime on his regular assignment.

In a statement submitted by Harrod, Harrod asserts that Claimant was offered but refused the overtime. According to Harrod:

"In reference to the overtime March 17 & 18, 1990 Mr. S. W. Lapole was offered the overtime and refused.

We were working 4 10 hr. days, and off Fri. Sat. & Sun. which was the 16 17 & 18 of March 1990.

I G. W. Harrod worked the 16 March 1990 & Mr. Lapole refused to come back on the 17 & 18 to work if he could not work straight through 16, 17 & 18.

The main thing is that Mr. S. W. Lapole was asked to work the overtime on March 17 & 18 and refused it."

At best, there is a conflict in the record with respect to whether Claimant was offered and refused the overtime, as the Carrier asserts, or whether Claimant was bypassed for the overtime, as the Organization asserts. We are unable to reconcile the factual discrepancies. Because the burden in this case rests with the Organization, the conflict in the evidence requires a finding that the Organization's burden has not been met. The claim must therefore be denied.

AWARD

Claim denied.

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 6th day of April 1995.