

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30915
Docket No. MW-30245
95-3-91-3-705

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
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Truck Driver J. L. Richardson to perform overtime service inspecting track on the Cincinnati Seniority District between Winchester and Corbin, Kentucky on July 7, 8, 21, 22 and August 12, 1990 [System File 1(42)(90)/12(90-917) LNR].

(2) As a consequence of the violation referred to in Part (1) above, Section Foreman W. F. Napier shall be allowed twenty-nine (29) hours and forty (40) minutes of pay at his respective overtime rate of pay."

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.

On five dates, a Truck Driver was assigned to perform track inspection work on an overtime basis. The trackage was entirely or largely within the Cincinnati Seniority District in territory assigned to the Richmond, Kentucky, Section Gang.

The Organization states without contradiction that the Truck Driver did not hold seniority on the Richmond Section Gang. The Organization argues that the overtime should have been assigned to the Claimant, who was the Richmond Section Gang Foreman, was available, and has greater seniority than the Truck Driver. Cited is Rule 30(f) which reads as follows:

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

The parties have no dispute that both the Truck Driver and the Section Foreman may be assigned track inspection work and that such work may also be performed by others. As emphasized by the Organization, the issue is not one of work assignment by classification, but rather one of overtime distribution.

In its Submission to the Board, the Carrier relies on Rule 30(g) which provides for assignment of work "on a day which is not part of any assignment" to the "regular employe" when extra or unassigned employees are not available. The Carrier asserts, without further evidence, that track inspection was part of the Truck Driver's "regular" duties. As pointed out by the Organization, however, the applicability of Rule 30(g) was not raised in the claim handling procedure on the property. As a result, the Board may not consider such new argument.

There is thus no basis to find that the overtime track inspection work should not be assigned as provided in Rule 30(f).

AWARD

Claim sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.