

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31294
Docket No. MW-31773
95-3-94-3-61

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks 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 Carrier violated the Agreement when it assigned junior Track Foreman D.E. Renois to perform overtime service at Lespt Street Yard on September 5, 1992 instead of assigning Track Foreman L.C. Barnes who was the senior foreman, available, qualified and willing to perform such service (Carrier's File 930080 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L.C. Barnes shall be allowed eleven (11) hours' pay at the track foreman's 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 herein.

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

This dispute involves a junior employee working on a rest day, while the senior employee was not called.

The Rule applicable to this dispute is Rule 14 Section 1(j) which reads as follows:

"(j) WORK ON UNASSIGNED DAYS. Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

The only part of the aforequoted Rule that the parties are in disagreement over is that portion reading:

"... in all other cases by the regular employee."

From the Rule, it is clear that overtime is not assigned in accordance with strict seniority guidelines but who is doing the work on a regular basis on the assigned work days. This is supported by Third Division Awards 28500, 29097, 29795.

In the on-property handling, the Carrier stated, without serious rebuttal, that Claimant's gang was renewing crossings whereas the junior employee's gang was removing turnouts and on the claim date the two gangs combined to remove rail and turnouts.

The Claim is denied. Carrier assigned the overtime as it was obligated to do pursuant to Rule 14 Section 1(j).

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 19th day of January 1996.