

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31302
Docket No. MW-30952
95-3-92-3-787

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned junior employee J. Cottrell to perform overtime service at a derailment at Mingo Jct., Ohio on March 28, 29 and 30, 1991, instead of calling and assigning Mr. C. Presutti to perform said work (System Docket MW-2132).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Presutti shall be allowed twenty-three (23) hours' pay at the applicable Class I Machine Operator'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.

At the time this claim arose, Claimant was a Class 1 Machine Operator in Carrier's Track Department. On March 28, 29, and 30, 1991, an employee junior to Claimant was scheduled to work overtime with his ballast regulator on the River Line, repairing defects discovered by the Geometry Car. When he was unable to obtain track clearance for necessary time on those dates, he was used to assist at the site of a derailment on the Mingo Junction.

By letter of April 1, 1991, the Organization submitted a claim on Claimant's behalf, alleging a violation of Rule 17 of the Agreement. Rule 17 reads in pertinent part as follows:

"RULE 17 - PREFERENCE FOR OVERTIME WORK

Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, during the course of their work week or day in the order of their seniority."

Carrier denied the claim on the basis that the ballast Regulator was the junior employee's regular assignment, and was not the regular work of Claimant. The claim was subsequently progressed in the usual manner, up to and including the highest Carrier officer authorized to handle such matters.

On the record before this Board, the Organization has not demonstrated persuasively that Claimant was, in fact, deprived of work to which he was entitled. In view of the clear language of Rule 17, the work in question clearly accrued to the employee who "ordinarily and customarily" performed it. Apart from Claimant's unilateral assertion, the Organization is unable to show that the work at issue was work customarily performed by him. Accordingly, the claim is denied.

AWARD

Claim denied.

Form 1
Page 3

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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.