

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31375  
Docket No. MW-32036  
96-3-94-3-404

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Denver and Rio Grande Western Railroad  
( Company

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

- (1) The Agreement was violated when the Carrier assigned junior Machine Operator H. E. Houle to perform overtime service in connection with a derailment at Grand Junction, Colorado on March 18 and 19, 1993, instead of assigning the senior employee, Mr. O. R. Ratliff (System Vile D-93-15/MW 93-151).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator O. R. Ratliff shall be allowed twelve (12) hours' pay at the 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.

On Thursday and Friday, March 18 and 19, 1993, Carrier required the service of a machine operator to perform overtime service at a derailment site near Grand Junction, Colorado. The employee used was junior to Claimant. Carrier acknowledges that it used a junior employee, but argues that it attempted to call-out Claimant but that he was not available.

Claimant maintains that he was aware of the derailment because of listening to Carrier radio transmissions, was aware that the services of a machine operator would be required, and kept his phone line open so that he would not miss the call when it came.

Carrier has offered nothing of substance to substantiate that it attempted to contact Claimant.

Accordingly, the Board, upon review of the entire record, must conclude that Carrier has not offered adequate evidence to support a conclusion that it attempted to contact Claimant and offer him the work, before it was given to a junior employee. Claimant was entitled to the work by seniority and Agreement provisions.

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 29th day of February 1996.