

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31660
Docket No. MW-31196
96-3-93-3-185**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 Vehicle Operator C. Berry to perform overtime service watching for fires on the rail grinding train operating on the Cleveland Line (former Bayard Branch) between Mile Posts 27 and 42 in Hammondsville, Salineville and Irondale, Ohio, for nine (9) hours on May 28, 1991, thirteen and one-half (13.5) hours on May 29, 1991 and five (5) hours on May 30, 1991, instead of calling and assigning Mr. M. Carney to perform said work (System Docket MW-2394).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Carney shall be allowed twenty-seven and one-half (27.5) hours' pay at the vehicle 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 the claim dates Claimant was regularly assigned as a vehicle operator when the Carrier assigned watchman overtime to a junior vehicle operator. The Organization agrees that the job of being a watchman is work for a trackman. It argued Rule 17 was violated. The Rule states:

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.”

The Carrier argues that the employee used was the senior trackman. It further argues Rule 17 is not applicable inasmuch as watchman duties are not ordinarily and customarily performed by vehicle operators.

It is clear from the record that the Rule cited by the Organization is not applicable in this case. The Organization has not met its burden of proving the Agreement was violated.

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 29th day of August 1996.