

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31664
Docket No. MW-31212
96-3-93-3-195**

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Foreman C.F. Miller to perform piloting duties on November 4, 5, 6, 7, 8, 11, 12, 13 and 14, 1991, instead of assigning Foreman R.L. Lutsko (System Docket MW-2379).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R.L. Lutsko shall be allowed twenty-eight and one-half (28.5) hours' pay at his time and one-half rate with vacation credit and all other benefits applied."

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 date the Carrier assigned the Track Foreman of Production Gang No. 1182 to work with the Patch Rail Gang and the Rail Unloading Work Train. The Foreman worked a total of 28.5 hours overtime, which was continuous with the normal tour of duty.

The Organization filed this claim on the basis that the Claimant held the position of Foreman-Pilot and should have been used for the overtime. It is curious that the Organization is only claiming overtime and not the straight time.

The Carrier avers it properly assigned the overtime in accordance with Rule 17, which 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 Organization has not refuted the Carrier's position that the overtime was continuous with the work performed during the day. Also, an examination of the job description of the Foreman-Pilot reveals it is void of any requirement to pilot rail unloading trains.

The Organization has failed to prove the Agreement was violated.

AWARD

Claim denied.

ORDER

The 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.