

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION****Award No. 31674  
Docket No. MW-31256  
96-3-93-3-272**

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 employe R.P. Shull, Jr. to perform overtime service at Mile Posts 145 to 130 and Mile Post 76 to 71 on the Cherry Tree Secondary on October 27, 1991 instead of assigning the senior employee, Mr. D.P. Smith (System Docket MW-2330).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D.P. Smith shall be compensated for ten (10) hours' pay at his time and one-half rate and credit for 1.85 days for benefits and vacation purposes."

**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 October 27, 1991, the Carrier needed an employee to perform quality control work for Tie Gang TM-224. The date was an assigned rest day for the gang. The Carrier chose the machine operator of the spike driver for the overtime.

The Organization claims that quality control work is performed by trackmen, and that the Claimant is the senior trackman. It further argues the work is done with hand tools.

The Carrier argues that quality control has always been performed by the operator of the spike driver and the machine is used in performing the quality control work.

This Board has no means to determine the facts in this case. The Organization has the burden of proof to show the Agreement has been violated by providing substantial evidence. Mere assertions are not sufficient. In accordance with a legion of Third Division Awards this case must be dismissed.

**AWARD**

Claim dismissed.

**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.**