

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31758
Docket No. MW-30700
96-3-92-3-485

The Third Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. 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 used Welder Helper J. Conti, instead of Trackman A. J. Crissman, to perform snow duty, cleaning switches, at Conway Yard on December 27, 1990 (System Docket MW-1923).**
- (2) As a consequence of the aforesaid violation, Trackman A. J. Crissman shall be compensated for eight (8) hours pay at his overtime rate of pay and for five (5) hours at his double-time rate of pay and he shall have December 27, 1990 credited as a day worked by him, and he shall have said work day credited toward any and all benefits to which he is entitled.”**

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 were given due notice of hearing thereon.

On December 27, 1990, the Carrier experienced a snow storm at the Conway Yards. Consequently, the Carrier assigned Welder Helper Conti to assist with the removal of snow and ice from the yard tracks. On that date, Welder Helper Conti worked for 13 hours, eight of which were compensated at time and one-half and five were compensated at the double-time rate.

As a result of assigning the Welder Helper, the Organization filed a claim on behalf of Trackman Crissman on December 30, 1990. In that claim, the Organization alleged a violation of Rule 4 and requested that the Claimant be paid for eight hours overtime and five hours double-time and receive credit for the day in accordance with the above statement of claim.

The Carrier denied the claim on February 25, 1991, stating that an emergency existed as a result of the snowstorm. As the claim was progressed on the property on May 14, 1991, the Carrier also suggested that the claim was invalid since the Organization failed to prove a violation of Rule 4. Rule 4 reads as follows:

"Section 1 Seniority Date:

(a.) Except as provided in Rule 3, Section 5, seniority begins at the time the employee's pay starts. If two (2) or more employees start to work on the same day, the seniority rank on the roster will be in alphabetical order. An employee assigned to a position of higher class than trackman will begin to earn seniority in such higher class and lower class on the same seniority roster in which he has not previously acquired seniority from the date first awarded an advertised position in such higher class. He will retain and accumulate seniority in the lower class from which assigned. An employee entering service in a class above that of trackman will acquire seniority in that class from the date assigned to an advertised position and will establish seniority as of the same date in all lower classes on the same seniority roster."

The Organization argues that the Claimant was fully qualified and readily available to be called back on December 27, 1990 to perform the overtime snow removal work.

The Organization argues that the Carrier's defense of an emergency is unproven. According to the Organization, the Carrier's claim of an emergency justifying the assignment of the less senior Welder Helper is an affirmative defense which the Carrier bears the burden of proof. The Organization contends that the Carrier's mere assertion of an emergency is insufficient to sustain that burden. The Organization notes that Conway Yard is located in an area which typically receives snow and, absent a snowfall of such magnitude so as to totally shutdown its operations, the Carrier cannot prove that an emergency exists.

The Organization also contends that Rule 17 requires the Carrier to call the more senior employee when overtime work is contemplated. Consequently, the Organization concludes that the Agreement requires seniority preference be given to the Claimant over the Welder Helper to perform the overtime work assigned on December 27, 1990 and that the Carrier failed its burden of proving its affirmative defense that an emergency existed.

The Carrier argues that a snow emergency did in fact exist on December 27, 1990. The Carrier also argues that given that the emergency existed, it had latitude to assign the work to the more readily available employees. The Carrier notes that the Welder Helper called lives 12 miles closer to the yard than the Claimant. Therefore, the Carrier argues that since an emergency existed, it properly assigned the work to the less senior Welder Helper.

Next, the Carrier argues that the Organization failed to prove a violation of Rule 4. According to the Carrier, Rule 4 merely establishes when a seniority date will accrue. According to it, nothing in the Rule requires that preference be given to an employee when assigning any work, much less overtime.

After considering the record submitted to the Board, we find that the Organization failed to prove a violation of Rule 4. Unfortunately, for the Organization, the Local Chairman cited Rule 4 as the appropriate Agreement violation when he submitted Claimant's claim on December 30, 1990. The Carrier correctly argues that Rule 4 does not require any preferential treatment for seniority when assigning straight-time work, much less overtime work. Rule 17 does require such a preference when assigning overtime work, unfortunately, however, the Organization failed to include it in its initial claim.

Because we can find no evidence that the Carrier's acts on December 27, 1990 violated Rule 4, we will deny this claim.

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 24th day of October 1996.