

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31800  
Docket No. MW-31368  
96-3-93-3-247**

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

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

**STATEMENT OF CLAIM:**

- “(1) The Agreement was violated when the Carrier assigned Salem, Ohio employes D. Pifer, B. Byrne and D. Doak to repair a broken rail and replace bars at Mile Post 37.8, on the Pittsburgh Seniority District on September 27, 1991, instead of calling and assigning Messrs. W. B. Miller and M. J. Carney (System Docket MW-2437).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. W. B. Miller shall be allowed five (5) hours' pay at the foreman's overtime 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 were given due notice of hearing thereon.**

**Claimant contends he should have been called for the overtime. The Carrier responded saying it did call, but received no response.**

The Organization furnished a statement written and signed by Claimant contending he, his wife, and children all were home on the day in question, and that no one from the Carrier called.

The Carrier furnished a statement from the Supervisor who did the calling. That Supervisor states that "All people was (sic) called no answer at Miller House...."

The Board is confronted with an irreconcilable dispute in facts and has no facts upon which it can resolve this dispute.

**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 26th day of December 1996**