

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31823
Docket No. MW-31291
96-3-93-3-336**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mr. D.L. LeVasseur to replace a production clamp on Tamper No. 161 behind the Mechanic Shop on Milby Street on February 27, 1992, instead of assigning the senior mechanic to perform said overtime service.

(2) As a consequence of the violation referred to in Part (1) above, Mechanic M. Davis shall be compensated at his time and one-half rate of pay for the two (2) hours expended by Mr. LeVasseur in the performance of said work."

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.

Mr. M. Davis and Mr. D. LeVasseur both have established and hold seniority as Roadway Equipment Mechanics within the Maintenance of Way and Structures Department. Mr. Davis is senior to Mr. LeVasseur in said classification. On February 27, 1992, Mr. LeVasseur was authorized to work two hours overtime, from 3:30 P.M. to 5:30 P.M., replacing the production clamp on Tamper No. 161. The Claimant also worked overtime on the date in question, from 3:30 P.M. to 4:30 P.M., repairing Maintenance of Way equipment. The Claimant filed a claim for two hours overtime because the junior employee, Mr. LeVasseur, was allowed to work one hour more overtime than the Claimant was authorized to work.

The Organization argues that because the Claimant was available, fully qualified and willing to perform all work performed by Mr. LeVasseur, the Carrier violated the Agreement, especially Rule 2, when it assigned Mr. LeVasseur to perform overtime mechanic's work instead of assigning the Claimant, as senior employee, to the work.

The Carrier argues that the claim must fail because the Organization has not proved any portion of the Agreement requiring that the senior employee relieve a junior employee in the middle of an overtime project, or an agreement that grants the senior employee the right to work all casual or unscheduled overtime.

The Board carefully reviewed the Agreement and has failed to find any language that allows the senior mechanic to have priority over all overtime work or to relieve a junior employee who has begun an overtime project. In Third Division Award 19393, this Board denied a similar claim when a senior clerical employee filed claims for work performed by a junior employee.

The Organization alleged that the Carrier failed to respond in the required 60 day time limit when it declined the claim by letter dated June 22, 1992. The Organization's procedural objection is without merit, as it appears to have incorrectly counted the 60 days from the date of its correspondence and not the date the claim was filed with the Carrier.

Because the Organization has not met its burden of proof in this case, the claim must be denied.

AWARD

Claim denied.

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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.