

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31924
Docket No. MW-31455
97-3-93-3-460**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
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 Repairman E. Hollock to perform overtime service (working with the B&B forces) on the National Dock Project at Jersey City, New Jersey on March 15 and 16, 1992 (System Docket MW-2566).**
- (2) As a consequence of the violation referred to in Part (1) above, Repairman E. Swarrow shall be allowed twenty-one (21) hours' pay at the repairman's time and one-half rate and seven and one-half (7½) hours' pay at the repairman's double time 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.

This claim involves the application of Rule 17 of the parties' Agreement. It reads as follows:

" 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."

It is undisputed in the record that no Repairman position was directly assigned as part of the B&B forces working on the National Dock Project. Claimant had previously held such a position in 1991, but it was abolished several months prior to the claim dates. On the claim dates, Claimant was assigned to Tie Gang TK-144.

Given these circumstances, Rule 17 made it incumbent upon the Organization to prove, as one of the requisite elements of its claim, that the disputed work ordinarily and customarily fell within the jurisdiction of Claimant's work on Tie Gang TK-144. This is especially so since the Carrier maintained the work ordinarily and customarily accrued to repairmen assigned to the Easton Shop. Being an indispensable element of the claim, it was the Organization's burden to establish this fact via submission of evidence. On this record, the Organization has not done so.

While it is true there is a statement by Claimant in the record appearing to assert he performed work of the same character in the previous five to six weeks, the statement is lacking in two important respects. First, it says only that Claimant repaired equipment used by "... the B&B and M&W Departments as well as the equipment used in my Gang for the past 5 to 6 weeks." The actual words used do not establish a connection with the National Dock Project. For us to conclude otherwise would require us to indulge in an unacceptable degree of speculation. Second, the statement sheds no light on the underlying circumstances. Even if we were to assume that Claimant worked on the National Docks Project in the immediately preceding weeks, the statement does not tell us whether he performed the work pursuant to Rule 17 or whether he was assigned because the employees who ordinarily and customarily did the work were unavailable for one reason or another.

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 4th day of March 1997.