

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31925
Docket No. MW-31457
97-3-93-3-441

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 Track Foreman T. Adams, instead of assigning Section Gang Foreman P. T. Tammaro, to perform overtime service (snow removal) in the Gang Mills Yard on March 11 and 12, 1992 (System Docket MW-2554).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. T. Tammaro shall be allowed fourteen (14) hours pay at his applicable time and one-half 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.

In this claim, the employee who performed the work and received the overtime pay had the greater seniority. Claimant is the junior employee and is claiming preferential entitlement to the overtime by virtue of Rule 17, which 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."

The essential question to answer in this case is whether the work involved (cleaning snow in Gang Mills Yard) accrued to the Claimant under Rule 17 by virtue of his regular assignment as a Section Foreman. The senior employee who did the work was regularly assigned as Foreman of a tamping gang.

Under Rule 17, a critical element of the claim is to establish the identity of the group of employees who ordinarily and customarily perform the work. Where more than one employee satisfies this test, seniority prevails. Being an indispensable element of the claim, the Organization bears the burden of proof associated with its establishment.

In its initial denial of the claim, Carrier asserted snow removal work was not ordinarily track maintenance work, but rather emergency work. Carrier's denial also asserted, without dispute on the property, that between six to seven inches of snow had accumulated by quitting time on March 11, 1992 and that all track forces were engaged in working the storm.

With the issue of ordinary and customary performance thus disputed, it was incumbent upon the Organization to produce sufficient evidence to show that snow removal of this magnitude accrued to the section gang only. Although the Organization reasserted and reargued its position, no such evidence was produced.

Because the senior employee was engaged in snow removal work in Gang Mills Yard on the immediately preceding work shift, we find no basis for concluding the Agreement was violated when he was offered the overtime assignment in seniority order.

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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.