

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32231
Docket No. TD-31832
97-3-94-3-138**

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

**(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

**“Accept this as a claim on behalf of the claimant and
dates herein listed below:**

**Saturday, March 14, 1992 - Desk ‘B’ Third Trick,
Claimant R. P. Framarin
Claim for 8 hrs overtime rate.**

**Sunday, March 15, 1992 - Desk ‘B’ Third Trick,
Claimant R. P. Framarin
Claim for 8 hrs overtime rate.**

**Monday, March 16, 1992 - Desk ‘B’ Third Trick,
Claimant L. A. Parmelee
Claim for 8 hrs overtime rate.**

**Tuesday, March 17, 1992 - Desk ‘B’ Third Trick,
Claimant R. P. Framarin (sic)
Claim for 8 hrs overtime rate.**

**On each of these days, a junior employee (J. J. Smith) was
used at the overtime rate to fill the vacancy on the third trick,
desk ‘B’. This overtime should have been assigned to the
claimants as they were senior employees.”**

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 is a straightforward dispute over the process of filling vacancies and the different interpretations given to Rule 5, Section 2(e) and Rule 12. The Claimants held regularly assigned Train Dispatcher positions on each of the claim dates. On each date, the third trick Train Dispatcher position on Desk "B" was temporarily vacant. Under the conditions in this instant case, the Carrier had to move an employee from their regularly assigned position to Desk "B" and pay overtime. The Carrier chose to move a junior employee off his regularly assigned position, rather than either of the senior Claimants.

The Organization alleges that when the Carrier failed to utilize seniority in diverting a regularly assigned Train Dispatcher off his position to cover the Desk "B" position it violated the Agreement. The Organization states that the junior employee should not have been assigned. It argues that the Carrier violated "the long established order of 'Seniority'..." A junior employee should not have been assigned to the vacancy when equally qualified senior employees were available. The Organization argues that this is supported by numerous Awards (Third Division Awards 31978, 31177, 24526, 14161, 19758, 21421, 24526 and 27593).

The Carrier argues that it properly filled the overtime vacancies under Rule 5. The Carrier further contends that the Claimants worked their regular positions and that it properly diverted the junior employee and paid the appropriate overtime payment under Rule 12 (b). As for the specific issue of seniority order the Carrier states:

"It is our position that since there is no language within Rule 12(b) requiring assignments under the rule to be made in seniority order, the claim in question cannot force such an interpretation."

The Board has carefully reviewed the provisions of the Agreement and the Awards cited by the parties to this dispute. The Organization cannot show any language in the cited Rules that require the Carrier to call the senior available employee. The facts herein are that Rule 5 is Rule that controls the order of calling employees to fill the overtime assignment. There is no evidence of record that the Carrier violated the language of this Rule. Further, having to divert an employee off their regular assignment to cover the vacant Desk "B" position had to be paid pursuant to Rule 12. Nothing in this Rule was violated.

The Organization has the burden to prove a violation in its negotiated Agreement with the Carrier. Here, the Organization is contending that the Board should read into the Agreement Rules cited an intent to assign on the basis of seniority even where it is not expressly stated. This, the Board cannot do. The Board can find a violation of the Rules cited when the Carrier fails to abide by negotiated language. There is no language in Rule 5 requiring the overtime assignment to be made on a seniority basis after the three stated provisions have been exhausted. There is no negotiated language in Rule 12 requiring overtime payment in seniority order which has been violated by the Carrier. The claim must therefore be denied. The Board cannot find anything the Carrier agreed to in negotiation that it failed to follow through with in its action herein.

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 17th day of September 1997.