

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33326
Docket No. MW-32544
99-3-95-3-449**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier allowed truck drivers assigned to SPG Gang 5XC6 to perform overtime work unloading equipment on August 11, 1994, instead of assigning Mr. G. J. Seib who was a member of the equipment unloading gang [System File 21 (31) (94)/12 (94-828) CSX].**
- (2) As a consequence of the above-stated violation, Claimant G. J. Seib shall be allowed four (4) hours’ pay at the 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.

On August 11, 1994, Foreman Fugate on Gang 5XC6 at North Vernon, Indiana, utilized Truck Drivers to unload equipment at the end of the day for movement to Dayton, Ohio. The Organization argues that the Claimant was a member of the unloading crew who was available, asked for the work and was denied his rights under Section 7(B) of the SPG Agreement. The Claimant's written statement confirms availability and his request for the work, stating that "I asked Mr. Fugate about going over and unloading the equipment at Dayton, [and] he said that they (the truck drivers) would handle it."

The Carrier asserted that there was no validity to the claim because the unloading of equipment was "not the exclusive work of any classification of employee." It denied that the Claimant was available and further denied any violation of the disputed Rule.

The merits of this claim pertain to Section 7 - Overtime of the SPG Agreement, which states in pertinent part:

"B. The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime."

The central issue is whether the Carrier had the right to deny the Claimant overtime for the work performed in this dispute.

In this case, after the Carrier denied applicability of Section 7(B) to the unloading of equipment, there is a rebuttal by the Organization that does not carry the force of sufficient weight. The Organization states that the Carrier's argument "is not entirely correct." A full and careful reading of the probative evidence does not prove that the work in dispute belonged to an "unloading crew" or was encompassed by the SPG Agreement. Unloading of equipment is not found within the language and provisions of the SPG Agreement and there is no evidence of record that it was either added by practice or addendum.

In summary, the Board considered the issue in light of the record. We find most applicable Third Division Award 32914, which similarly concluded that the Organization failed to demonstrate that the "disputed preparatory work was SPG Gang

work.” Nothing in this record persuasively proves that the unloading of equipment could not have properly been performed by the Truck Drivers who did the work.

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 May 1999.