

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33390
Docket No. MW-32271
99-3-95-3-87

The Third Division consisted of the regular members and in addition Referee Robert Perkovich 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 junior Trackman R. J. Quatrone to perform overtime service (traveling work equipment, spiker from New Castle, Pennsylvania to West Field, New York) on September 30 and October 1, 1993, instead of assigning senior Trackman Operator M. D. Kimbrough (System Docket MW-3246).

(2) As a consequence of the violation referred to in Part (1) above, Mr. M. D. Kimbrough shall be allowed nineteen and one-half (19.5) hours' pay at his time and one-half rate and he shall receive credit for day and month benefit and vacation purposes.”

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 September 29, 1993 and all other material times, the Claimant was assigned as a trackman operator when his gang was asked for volunteers to assist moving equipment. The Claimant was not assigned to perform the work in question, but rather, it was assigned to another, junior employee.

The Organization contends that because the work in question was work that was ordinarily performed by the Claimant the Carrier violated Rule 17 when it failed to assign the overtime work to him by virtue of his greater seniority. The Rule provides, in relevant part, as follows:

“Employees will, . . . be given preference for overtime . . . , on work ordinarily and customarily performed by them during the course of their work week in order of seniority.”

The Carrier argues however that the claim should be dismissed because the work in question was offered to the entire gang, including the Claimant, and that he did not volunteer to work on the tasks in question. In reply the Organization denies that any such offer was made. Finally, the parties have both provided written statements in support of these wildly divergent arguments.

It is clear from the foregoing that the record before us reveals an irreconcilable dispute in the facts of the case and that this record does not provide us with the tools necessary to resolve the factual dispute. Thus, under long-standing precedent between these same two parties, we have no choice but to deny the claim. (See e.g.. Third Division Awards 27195, 29506, 29546, 29555).

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 13th day of July 1999.