

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34990  
Docket No. MW-31040  
00-3-92-3-921**

**The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(Consolidated Rail Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned B&B Foreman Parker and Mechanics Meehan, Campbell and Guido to perform overtime service, delivering meals to employes working at a derailment on the Pittsburgh Main Line, Bloomfield, Pennsylvania, on July 15 and 16, 1991 (System Docket MW-2244).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. L. Cesarino and P. Somers shall each be allowed eight (8) hours' pay at their respective time and one-half rates and eight (8) hours' pay at their respective double time rates.”**

**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 case involves a claim by the Organization that the Carrier failed to observe the seniority Rules of the Agreement and past practice when it assigned employees junior to the Claimants to perform overtime service of delivering meals to employees working at a derailment on the Pittsburgh Main Line at Bloomfield, Pennsylvania, on July 15 and 16, 1991. The Organization argues that Rule 3 requires the Carrier to follow seniority even when, as here, it is filling temporary positions.

The Organization further asserts that there was no emergency which might allow the Carrier to assign the overtime service to junior employees. According to the Organization, moreover, even if an emergency did exist, there has been no showing that the Claimants could not have performed the work as expeditiously as the junior employees who were assigned the work.

The Carrier, on the other hand, asserts that the assignments at issue did not violate the Agreement's seniority Rules. According to the Carrier, Rule 3, cited by the Organization, regulates the assignment of an employee to a particular position or vacancy, and does not govern procedures for assigning daily work activities or for calling employees for overtime.

The Carrier adamantly denies the existence of any practice or Agreement that governs the transport of meals to wreck crews. Rather, the Carrier argues, the sole limitation on the assignment of overtime to a particular employee is Rule 17, which requires that an employee assigned tasks during his regular tour shall be given preference for the assignment to such work on overtime, according to seniority. The Carrier asserts that because the Claimants had no demand right to the work under Rule 17, it was free to assign the task of transporting meals in the manner it deemed most expeditious and advantageous at the time.

After reviewing the record evidence, we have determined that the claim should be denied. There is no Rule or practice, under these facts, which precluded the Carrier from assigning the disputed work in the manner it did. Rule 3 does not apply because the case did not involve the filling of a temporary position, as the Organization asserts, but rather involved the assignment of tasks. Such assignments are regulated under Rule 17 only when the work is ordinarily and customarily performed by employees during the course of their work day or workweek. Here, that is not the case.

So, too, we find no evidence that a past practice has been violated. At most, the facts demonstrate the existence of an administrative mechanism used by the Carrier in the assignment of tasks in different territories. There was no obligation in this case to adhere to that mechanism.

**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 20th day of September, 2000.