

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35004
Docket No. MW-31538
00-3-93-3-534**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 Mr. J. F. Hufford to perform overtime service performing welder’s work at various locations in the Conemaugh area beginning June 8, 1992 and continuing instead of assigning senior Welder R. J. Sida to perform said work (System Docket MW-2630).**
- (2) As a consequence of the violation referred to in Part (1) above, Welder R. J. Sida shall be compensated, at the welder’s overtime rate, for all wage loss suffered as a result of Mr. Hufford performing welder’s work beginning June 8, 1992, and continuing with all credit for benefits as if he had worked the overtime.”**

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 violated Rules 1 and 3 of the Agreement when it assigned a Welder Foreman with less seniority than the Claimant in the Welder class to perform overtime assignments involving the performance of welding rail ends. According to the Organization, the overtime work was work accruing to the Welder class which the Claimant customarily and ordinarily performed by virtue of his regular assignment as a Welder.

According to the Organization, seniority is established and maintained in separate classes and groups, and assignments are to be made in accordance with class and group seniority. Noting that Rule 1 establishes separate and distinct classes of "Welder" and "Welder Foreman," and that the duties of a Welder as stated in Rule 1 are to "[p]erform welding of track and appurtenances thereto," and further noting that the duties of a Welder Foreman are to "[d]irect and work with employees assigned under his jurisdiction," the Organization argues that the Claimant, having greater seniority in the Welder classification, should have been assigned the disputed overtime work.

Moreover, the Organization argues that the Claimant was entitled to the disputed overtime work under Rule 17, which reads:

"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."

In this regard, the Organization disputes the Carrier's attempt to distinguish the welding of rail ends from the welding of rail frogs. According to the Organization, during the welding of rail frogs, the Welder normally makes necessary repairs to the rail ends. The Organization therefore argues that the Claimant "ordinarily and customarily" welds rail ends in connection with his normal duties of inspecting and repairing frogs. It further asserts that the welding of rail ends is the type of work "ordinarily and customarily" assigned to and performed by employees in the "Welder" classification. Accordingly, it argues that the assignment of such work to Mr. Hufford,

an employee assigned and working as a Welder Foreman, was a violation of the Agreement.

The Carrier, on the other hand, asserts that the service of welding rail ends is normally performed by Mr. Hufford during his regular tour of duty. According to the Carrier, Mr. Hufford has been performing the actual welding of rail ends, notwithstanding his classification as Welder Foreman. On the days in question, according to the Carrier, Mr. Hufford's performance of the welding of rail ends on overtime duty was continuous with his normal tour of duty, and therefore was authorized under Rule 17.

After reviewing the record evidence, we have determined that the Organization's claim should be denied. Rule 17 governs this dispute. Under Rule 17, preference for overtime work shall be given to the employee who has been performing the work in the course of the work day or workweek immediately preceding the need for overtime. The record evidence persuades us that Mr. Hufford had been ordinarily and customarily performing the welding of rail ends during the course of his workweek on the Harrisburg Subdivision. Accordingly, it was proper for the Carrier to use Mr. Hufford to perform the disputed overtime work, even though a more senior Welder was available.

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.