

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35419
Docket No. MW-32703
01-3-95-3-44**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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. R. Thomas to perform Class 2 Machine Operator duties instead of calling and assigning Mr. R. Bee to perform the overtime work on April 25, 1993 (System Docket MW-3168).**
- 2. As a consequence of the violation referred to in part (1) above, Class 2 Machine Operator R. Bee shall be allowed eight (8) hours' pay at his respective 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 Sunday, April 25, 1993, the Carrier experienced a derailment in Conway Yard. The Carrier called employee R. Thomas on overtime and assigned him to operate a front-

end loader to assist in clearing the derailment. Mr. Thomas worked eight hours of overtime on April 25, 1993.

The Organization contends that the Claimant should have been called for the overtime on April 25, 1993, since he is headquartered at Conway Yard and ordinarily and customarily operates Class 2 machines in the vicinity of Conway Yard in connection with track maintenance during his normal workweek. The Organization therefore filed a claim requesting that the Claimant be made whole for the overtime denied him on Sunday, April 25, 1993.

The Carrier asserts that Supervisor John Demeno called the Claimant for the overtime on April 25, 1993, but his call went unanswered. However, the Claimant submitted a statement in which he alleged that he was at home all day and evening on April 25, 1993, and did not receive a call for this service nor was any message left on his answering machine.

There is no evidence in the record to refute the Claimant's statement. Therefore, his claim that he was home all day and evening on Sunday, April 25, 1993, and received no call from the Carrier stands unrefuted. Inasmuch as the Claimant should have been called for this overtime in accordance with Rule 17 of the parties' Agreement the claim will be sustained as presented since the Carrier never took any exception to the remedy requested for the Claimant by the Organization.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of April, 2001.