

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35424
Docket No. MW-32931
01-3-96-3-302**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on February 4, 1995, the Carrier assigned Foreman D. L. Keith to perform overtime service at a derailment on the Pittsburgh Line near Mile Post 147.2 instead of calling and assigning furloughed Foreman J. A. Snouffer to perform said work. (System Docket MW-3784).
- (2) As a consequence of the aforesaid violation, Foreman J. A. Snouffer shall be allowed sixteen (16) hours' pay at his straight time 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 February 4, 1995, a derailment occurred at Mile Post 147.2 on the Carrier's Pittsburgh Line. The Carrier assigned Assistant Foreman D. L. Keith to assist with the derailment. At the time, Mr. Keith was an Assistant Foreman on a surface correction production gang.

On February 23, 1995, the Organization filed a claim on behalf of Foreman J. A. Snouffer who had more seniority than Assistant Foreman Keith. Foreman Snouffer held seniority in the track department on the Harrisburg Division where the derailment on February 4, 1995, occurred. He had been in a furlough status since January 4, 1995. The Organization contends that the Claimant should have been recalled from furlough to work on the derailment since he ordinarily and customarily performed such work during the course of his workweek.

The Carrier denied the claim contending that the derailment on the mainline at Mile Post 147.2 on the Pittsburgh Line created an emergency situation and it therefore contacted the first available employees to report to the derailment site.

When the claim was handled on the property, the Organization never refuted the Carrier's contention that the derailment at Mile Post 147.2 on February 4, 1995, created an emergency situation. On numerous occasions the Board has ruled that in an emergency a Carrier has wider latitude than it has under non-emergency situations.

In the light of the exigent circumstances caused by the derailment on the mainline at Mile Post 147.2 on February 4, 1995, the Carrier had the discretion to consider the Claimant unavailable for work on the derailment inasmuch as he had been furloughed for approximately a month at the time. Because the Claimant was not considered available for this overtime work Rule 17 was inapplicable and therefore the Carrier was not obligated to call him for this work. The claim must be denied as a result.

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 26th day of April, 2001.