

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35443
Docket No. MW-34354
01-3-97-3-967**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and used employes from the Paynesville Maintenance Crew 769 to perform overtime service (working with the rail grinder) between Mile Post 57.1 and Mile Post 112.0 on October 29 and 30, 1996 rather than assigning Paynesville Section Foreman R. P. Conzet and Section Laborer B. N. Erickson (System file R1.102/8-00298).**
- (2) As a consequence of the violation referred to in Part (1) above, Paynesville Section Foreman R. P. Conzet and Section Laborer B. N. Erickson shall each be compensated for six and one-half (6.5) hours' pay at their respective time and one-half rates of pay.”**

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.

According to the record, the parties entered into a Letter of Understanding dated February 18, 1992 regarding the use of Maintenance Crew 769 headquartered at Paynesville, Minnesota. Per the letter, the Maintenance Crew was established to "... augment the section crews ..." on the Paynesville Subdivision. In similar manner, the letter elsewhere stated that the Maintenance "... crew will be used to augment existing sections on the line, ..." The letter provided no other guidance about its intended application and no bargaining history evidence was presented on the property by either party.

On the claim dates, the Maintenance crew was used to augment Section Crew 767, which was also headquartered at Paynesville. The Claimants, who are regular members of the Section crew, asked to be assigned to follow the rail grinder as it operated within their territory on the claim dates. They made this request because of their expectation that such work would provide them overtime opportunities. The Carrier chose instead to have the Maintenance crew follow the rail grinder. The Claimants performed other section work elsewhere within their territory on the claim dates, which apparently did not generate any overtime for them. The Maintenance crew, however, worked 6.5 hours of overtime as noted in the Statement of Claim, above. On October 29, they worked overtime after regular hours from 3:30 to 6:00 P.M. On the 30th, they worked overtime before regular hours from 3:00 to 7:00 A.M. It is undisputed that the Claimants were not working during these hours.

The Organization provided evidence in the form of time sheets to show that the Section crew had performed the work involved in following the rail grinder in the past. The Carrier provided only unsubstantiated assertions that the Maintenance crew had been used for such past work. The Organization also cited several Rules and prior Awards of the Board in support of its claim.

After careful review of the cited Rules, the on-property record, and the prior Awards, we find we must deny the claim for lack of proof. The prior Awards are inapposite in that they involve different parties, rules and facts. Most noteworthy, however, is the fact that none of them involved a letter of understanding like we have here.

The central question in this dispute is the priority of rights to overtime opportunities among the various members of the augmented Section crew when the opportunity arises for one part of the crew, but not the other. In essence, what happened is that the Maintenance crew augmented the regular Section crew to make a larger Section crew. The Section crew, thus augmented, was then divided into two components to perform work on the Paynesville section. One component followed the rail grinder; the other worked elsewhere on the section.

There is no charge that the non-overtime hours worked by the augmenting employees who followed the rail grinder violated of any aspect of the October 1, 1987 Agreement as supplemented by the Letter of Understanding. It must be seen, therefore, that the divided work assignments did not per se violate the Agreement. It is only when overtime hours entered the picture that the claim arose.

Careful examination of the Rules cited by the Organization does not reveal any language that specifically addresses priority of overtime assignment. Rather, they pertain to work classifications and general seniority issues. Indeed, the word "overtime" does not appear anywhere in the cited portions. Moreover, as noted previously, the Letter of Understanding is essentially silent on the subject of permitted uses of the augmenting employees - certainly as it relates to overtime priority.

Given the available Agreement language and the text of the Letter of Understanding, we have no proper basis for determining overtime assignment priorities on this record without indulging in speculation. Our role does not permit us to do so. Because it was the Organization's obligation to establish all requisite elements of its claim, we must deny the claim for failure to satisfy the burden of proof.

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.