

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35988
Docket No. MW-33219
02-3-96-3-691**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 the Carrier called and assigned Machine Operator A. Summa to perform trackman's work (repaired a pull apart) at Federal Mine #2 on February 18, 1995, instead of recalling and assigning Trackman L. Collins (System Docket MW-3933).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Collins shall be allowed eight (8) hours' pay at his time and one-half rate with credit for benefit and vacation purposes.”**

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.

The thrust of the claim herein is that the Claimant was improperly bypassed for an overtime opportunity on his rest day at a time when he was allegedly at home and available. The claim further alleged that junior Trackman R. C. Swiger was called that morning.

The Carrier replied that the Claimant was called for the work opportunity at approximately 6:30 A.M., but the Claimant refused. The Carrier attached a copy of its

February 18, 1995 "call sheet" showing that 15 employees had been called before the Machine Operator was called and accepted the assignment.

The Claimant's name is the tenth name listed on the call sheet. Swiger is listed three names later. It also shows that the Claimant was called at 6:33 A.M. and refused the assignment. The call sheet is signed by Supervisor D. Chisler.

Thereafter, the Organization produced a statement signed by the Claimant and his wife to the effect that he had not been called. The Claimant's statement is dated March 29, 1995, some five weeks after the date in question. No other evidence was provided by either party.

In our view, this record confronts the Board with an irreconcilable conflict of material fact. The Claimant's statement, witnessed by his wife, says one thing. The Carrier's call sheet, which does contain indicia of probative reliability, is diametrically opposed.

It is well settled that our appellate role does not allow us to resolve such factual conflicts. Accordingly, we are compelled to deny the claim for failure of the Organization to sustain its burden of proof.

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 19th day of March, 2002.