

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36174
Docket No. MW-35416
02-3-99-3-305**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Clinchfield
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned junior Trackman J. C. Turner to perform overtime track work (rail repair) at Mile Posts 30.1 and 47 on February 19 and 20, 1998 to the exclusion of senior and regularly assigned Trackman E. O. Garrett. [Carrier’s File 12(98-1022) CLR].**
- (2) As a consequence of the violation referred to in Part (1) above, Trackman E. O. Garrett shall now ‘ . . . be paid eight (8) hours at his applicable overtime rate 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.

The Organization is seeking eight hours' overtime pay in alleging the Carrier's violation of Rules 31 and 32, when the Carrier ran around the Claimant and assigned a junior employee to repair broken rails. Rule 31 (Authorized Overtime) states in part that the "... employees working in the seniority Class of the immediate force or gang delegated to perform the work who have made themselves available, will be notified or called on a seniority basis." Rule 32 (Calls) states that when called for overtime they, "shall be paid ... for work performed at the rate of time and one-half. ..." The Organization argues that the Carrier failed to follow the Agreement and that the claim is therefore valid.

The Carrier does not deny that the junior employee was called to perform overtime service. It centers its defense on the right of management to determine how work is done; the fact that the Claimant lacked a commercial driver's license (CDL); and that the junior employee who had the CDL was needed to drive the boom truck that required a CDL. It further argues that the claim is excessive.

There is no dispute in this record that the work performed and authorized for overtime was to repair broken rails at MP 30.1 and MP 47 on February 19 and 20, 1998. It is undisputed that the Foreman and Assistant Foreman who worked overtime drove the truck each day of the week on this section and both had CDLs. Likewise, there is no dispute that the Claimant neither needed a CDL for his Trackman position nor possessed one. Finally, the facts of record indicate that the junior employee called ahead of the Claimant did possess a CDL.

The Board agrees that it is management's prerogative to determine how broken rails are to be repaired and who will drive the boom truck. The problem the Board finds with the instant facts lies in the affirmative defense of the Carrier. The Carrier asserted that the junior employee "was needed to drive the boom truck." The Organization disputed that assertion, in that both the Foreman and Assistant Foreman regularly drove the boom truck and could have done so. If it is the Carrier's position that the Claimant was not run around in violation of seniority protection under the Rules, due to the fact that the junior employee was actually needed to drive the boom truck, then proof must follow. While the Carrier may have the right to call the junior employee under various circumstances, it bares the burden of providing evidence sufficient to uphold its judgment and to demonstrate sufficiently that the lack of a CDL by the Claimant made him unqualified in this instance. We find no evidence whatsoever that

the junior employee was needed to drive the boom truck or that he ever drove the boom truck during the overtime repairs.

Accordingly, as the Carrier made no argument on the property as to how the claim might be excessive and provided no proof to overcome the Organization's evidence, the claim must be sustained.

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 20th day of August 2002.