

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36620
Docket No. MW-35089
03-3-98-3-829**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific 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 Crane Operator D. Johnson to perform overtime service to operate a front end loader at Muskego Yard, Duplainville, Wisconsin on May 14, 1997, instead of calling and assigning senior Machine Operator T. L. Tisdale (System File C-24-97-CO60-14/8-00219-017 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator T. L. Tisdale shall be allowed seven (7) hours and thirty (30) minutes' pay at his machine operator's 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.

Commencing April 2, 1997, Machine Operator T. L. Tisdale ("Claimant") was regularly assigned to a bulletined day-shift assignment operating a Front End Loader at Muskego Yard, Milwaukee, Wisconsin. On the evening of May 7, 1997, the Carrier experienced a derailment near Duplainville, Wisconsin, which blocked both mainlines and required the services of a Machine Operator to run the Muskego Yard Front End Loader on an overtime basis. Without making any attempt to call Machine Operator Tisdale (the regularly assigned Front End Loader Operator at Muskego Yard), Roadmaster Poeschel called and assigned Machine Operator D. Johnson (the regularly assigned Crane Operator at Muskego Yard) to work the required overtime on the Front End Loader that night.

The record establishes that during the regular workweek the Claimant resided at a Carrier-approved away from home lodging facility at West Allis, Wisconsin. The record also shows that when he started the assignment operating the Front End Loader at Muskego Yard in early April 1997, the Claimant had complied with requests from Foreman R. William and Foreman B. Stewart to provide them with his home telephone number and his cell phone number. The Claimant's written declaration that these Foremen told him they would give those numbers to Roadmaster Poeschel, for the purpose of overtime calls, is unrefuted on this record.

The Carrier did not effectively refute any of the foregoing facts of record but defended its denial of the claim primarily on grounds that the derailment emergency trumped the Claimant's right, as the regular Front End Loader Operator, to be assigned the overtime work. Additionally, the Organization and the Claimant had not proven that he was available in his motel room, that the Carrier could have contacted him, that his cell phone was "turned on" or that he would have worked had he been called. These latter defenses are of no avail in this particular case, however, because the Carrier management called Johnson without even attempting to call the Claimant. As for the "emergency" defense, authoritative precedent establishes that, even with the broad latitude which Carriers must be permitted in emergency situations, the Carrier must ordinarily make a reasonable effort to call and use the employees intended by the Agreement before calling others. See Third Division Awards 21222, 21224, 33421 and 35572. [Although not dispositive, it is also worth noting that the Claimant in West Allis, Wisconsin, was only 13 driving miles and 16 minutes driving time from the overtime service in question; whereas

Johnson, who resided at Hartford, Wisconsin, was approximately 25 driving miles and 40 minutes driving time to Duplainville, Wisconsin.]

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 29th day of July 2003.