

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36710
Docket No. MS-36119
03-3-00-3-245**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(R. L. Siders
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“March 1, 2, 8, 11, 12, 16, 17, 18, 19, 22, 23, 24, 25, 29, 30, 31, 1999 also April 1, 2, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 1999 CSX called R. D. Smith ID #501101 Clarksburg Yard Foreman to perform flag protection on the Fairmont Subdivision which R. L. Siders is the bid in Foreman of that Section. Mr. Smith is a senior foreman but he bid the job in Clarksburg where he is entitled to overtime. Mr. Siders bid the job on the Fairmont Subdivision which entitles him to the overtime there. If Mr. Smith wanted the overtime on the Fairmont Subdivision he was free to bid on it when it was open, or bumped on it. He chose not to therefore gave up his right for overtime on the Fairmont subdivision.

Reaction to the Carrier’s decision to call Mr. Smith from his bid in job to flag on Mr. Siders bid in section, working from 6:00 AM to 7:30 PM on the dates mentioned Mr. Siders is claiming five (5) hours overtime for each day. 140 overtime hours.”

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.

First, on a procedural basis, this Board cannot consider this claim.

Circular No. 1 requires parties to proceedings before the Board to file Submissions. For cases pursued by individuals such as this matter, the NRAB Instruction Sheet given to parties plainly states that after a Notice of Intent is filed with the Board "... you must file ... four copies ... of your Submission with the assigned NRAB Case Number shown on the cover page." The Instruction Sheet further states that "[u]nless and until the provisions of Circular No. 1, as outlined and summarized above, are complied with, disputes cannot be progressed further."

No Submission was filed by the Claimant as required. All the Board has is various correspondence from handling on the property. The Claimant therefore did not follow the above Submission requirements. Because of that failure, this "... dispute ... cannot be progressed further" and must be dismissed.

Even if we could reach the merits of the dispute, we would deny the claim. Rule 24(e) provides "[e]xcept for assigned overtime and incidental overtime following and continuous with a regular assignment, the procedure as outlined ... will be followed in utilizing track forces for overtime service." Yard Gang Foreman R. D. Smith who was assigned the disputed work was senior to the Claimant and was awarded the flagging position on the basis of that seniority. The overtime Smith performed was work associated with that position and was incidental to and continuous with Smith's assignment. The Claimant has shown no violation of a governing Rule.

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AWARD

Claim dismissed.

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 17th day of September 2003.