

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36758
Docket No. MW-35981
03-3-00-3-74**

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

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employees J. Dalzal and B. E. Clark to perform overtime trackman service (install ties) at the Fort Orange siding in Casselton, New York and in the Selkirk Yard on February 28, 1998 instead of calling and assigning Trackmen R. E. Irwin and J. M. Kudlack (System Docket MW-5339).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. E. Irwin and J. M. Kudlack shall each be compensated for twelve (12) 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.

Claimants Kudlack and Irwin held Trackman seniority dates of 1976 and 1974, respectively, and were regularly assigned to Trackman positions on the Selkirk Subdivision of the Mohawk Hudson Seniority District on the Albany Division.

This claim asserts that on Saturday, February 28, 1998 (the Claimants' rest day), employees who held less seniority in the Trackman classification than the Claimants were assigned to perform Trackman work on an overtime basis which included installing ties at the Fort Orange siding in Casselton and in the Selkirk Yard, specifically, changing ties, pulling spikes, changing plates, spiking, etc. The Organization asserts that the Claimants should have been called for the overtime rather than assigning the work to employees junior to them in the Trackman classification.

The Carrier responded that that the disputed work performed by a Foreman and Machine Operators was "normal and a customary part of their work assignments" and that "more than just trackman work was performed to which neither of the Claimants would be entitled." The Carrier asserted that the employees who worked on the date in dispute "performed surfacing work with hand tools, including track jacks, tamping guns, forks and a level board" and those employees "had been working as a surfacing gang at the time of the claim."

While the exchange of correspondence on the property contains general assertions and denials made by the parties' representatives, there are two statements from Track Foreman M. L. Benacquisto who was at the worksite on the day in dispute and directing the work. The first states that:

"On Feb 28, 1998 I worked at Fort Orange siding in Castleton and also in Selkirk Yd for a total of 12 hrs.

On this day I putting in ties had J. Dalzel, Bruce Clark . . . Bill Dolder and Bob Payne. Mr. J. Kudlack and R. Irwin were not asked to work and should have."

The second statement from Foreman Benacquisto states that:

“On Saturday February 28, 1998 we installed ties on the Fort Orange siding.

The only machine we used was a backhoe run by Machine Operator J. Worley.

* * *

No surfacing was done on this day, nor was there suppose to be.”

We find that the evidence in this record sufficiently shows that on February 28, 1998 Trackman’s work was performed on an overtime basis by employees who had lesser seniority than the Claimants in the Trackman’s classification. The Carrier’s affirmative defense that the work was actually surfacing work properly performed by other employees has been factually refuted by Foreman Benacquisto’s statements. The claim will 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 29th day of December 2003.