

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36759  
Docket No. MW-35983  
03-3-00-3-75

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 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 Foreman R. Y. Harbison to perform overtime service (snow related duties) in the Niagara Yard, Niagara, New York on March 14, 1998 through March 15, 1998 instead of calling and assigning I&R Foreman R. N. Schlegel to perform said work (System Docket MW-5368).
- (2) As a consequence of the violation referred to in Part (1) above, I&R Foreman R. N. Schlegel shall now be compensated for sixteen (16) hours' pay at his respective time and one-half rate of pay and for one (1) hour pay at his respective double time 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 Claimant and R. Y. Harbison are Inspection and Repair (I&R) Foremen with the same tours of duty and rest days. Harbison is senior to the Claimant. Although there was a dispute at first, it appears from the record that the parties agree that the Claimant and Harbison were headquartered at Niagara Yard. However, according to the Organization, Harbison was assigned to other duties at other locations while the Claimant performed his duties in Niagara Yard.

On March 14 - 15, 1998, the Carrier needed additional assistance in clearing snow from switches in Niagara Yard. Harbison and not the Claimant was assigned the overtime work. This claim followed.

Rule 17 provides that "[e]mployees will, if qualified and available, be given preference for overtime work, including calls on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority." The Organization asserts that although junior to Harbison, the Claimant was entitled to the overtime work because he was regularly assigned to Niagara Yard where the work was performed.

In order to prevail under Rule 17, the Organization must demonstrate that the snow removal work in dispute was "work ordinarily and customarily performed" by I&R Foremen. The record shows that performing such snow duty is not incumbent to any specific craft or individual. The Claimant and Harbison were I&R Foremen - they performed inspection and repair duties. They were not Track Maintainers who performed maintenance work during the week. Here, the Carrier used seniority and utilized senior I&R Foreman Harbison to perform the snow removal work. Because the Organization has not demonstrated that such work was "work ordinarily and customarily performed" by I&R Foremen, we do not find such action violated the Agreement.

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**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 29th day of December 2003.