

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37052
Docket No. MW-36207
04-3-00-3-335

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned junior Water Service Department Mechanics R. D. Robinson, J. C. Karl and/or K. A. Yoder to perform overtime service (routine cleaning of the Proceco machine) at Mile Post 88.9 in Sacramento, California in January 8, 9, 22, 23, February 5, 6, 19 and 20, 1999, instead of calling and assigning Water Service Mechanics T. J. Farinha and T. J. Miller (Carrier's File 1186127 SPW).
- (2) As a consequence of the violation referenced in Part (1) above, Claimants T. J. Farinha and T. J. Miller shall now each be compensated for thirty-two (32) hours' pay at their respective water service mechanic, Class 07 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.

On January 8, 9, 22, 23, February 5, 6, 19 and 20, 1999, the Carrier assigned Class 07 Water Service Mechanics regularly assigned to the Roseville Facility to work weekend overtime maintaining and cleaning the Proceco machine, a machine in the Roseville Facility that cleans electric motors and parts prior to rebuilding. In this claim, filed March 4, 1999, the Organization asserts that the Claimants, Class 07 Water Service Mechanics regularly assigned to the Water Treatment Plants at Sacramento and Roseville, respectively, were entitled by seniority to work this overtime. The Organization further asserts that the Carrier violated the Agreement when it called and utilized junior Class 07 Water Service Mechanics from the Water Service Gang to work the claimed overtime on the Proceco machine. While the regularly assigned work of the Claimants and the junior Water Service Mechanics is situated around Sacramento/Roseville, their common seniority roster runs from Reno, Nevada, west to Sacramento, south to Chowchilla (Fresno) and north to Tehama, California.

The Agreement provisions at the heart of this dispute are Rules 18 and 25, which read in pertinent part, respectively, as follows:

“Rule 18(k) Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

* * *

Rule 25(b) Preference for Overtime. Employees of gang with designated limits will have preference to casual overtime in connection with work performed by such gang. Other employees will have preference to overtime in connection with the work projects performed by such employees. . . .”

Close examination of the claims correspondence shows that the Claimants assert seniority preference entitlement to all overtime in the seniority district, irrespective of who does the work during the regular workweek. The theory that senior employees have a generic demand right to all overtime in the seniority district, irrespective of who does the work regularly, was found unpersuasive in Third Division Award 26252 involving the same parties and contract language and is not consistent with the express language of Rules 18 and 25, supra. To prevail in this case, the Organization had to demonstrate by at least a preponderance of record evidence that the work of cleaning and servicing the Proceco machine was, in the words of Rule 25(b) a "work project performed by [Claimant's Water Service Treatment Plant] gang" and that they were, in the words of Rule 18(k) the "regular employee(s)" who performed that work during the Monday - Friday workweek. Not only did the Organization fail to make out a prima facie case that this Proceco machine work was work regularly performed by the Claimants during their workweek, the Carrier demonstrated persuasively that the employees assigned the overtime were the employees who regularly performed such work during the week.

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 22nd day of June 2004.