

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37320
Docket No. MW-37244
04-3-02-3-239

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior employee W. S. Smith to overtime service (preparation work for rail gang) at CFP 97.8 in the vicinity of Franconia, Virginia on November 11, 2000, instead of Mr. J. A. Kincer [System File A06516300/12(01-0100)CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. A. Kincer shall now be compensated for three (3) hours' pay at his respective time and one-half 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.

On Saturday, November 11, 2000, an unassigned day, the Carrier needed the overtime services of four employees, including a Machine Operator and a Welder Helper. The Carrier assigned the Claimant as the Machine Operator and W. S. Smith as the Welder Helper. The Claimant earned five and one-half hours of overtime pay and Welder Helper Smith earned eight and one-half hours of overtime pay on their respective assignments.

At issue is whether the Carrier properly assigned the overtime work in accordance with Rule 17, Section 1(a) which provides:

"RULE 17 – PREFERENCE FOR OVERTIME WORK

Section 1 – Non-mobile gangs:

- (a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them."

The Organization contends that the Carrier violated the foregoing Agreement language when it sent the Claimant home after five and one-half hours of overtime, yet retained Welder Helper Smith for an extra three hours of overtime. The Organization asserts that as a Trackman, the Claimant was senior to Welder Helper Smith. Therefore, the Claimant should have been permitted to "bump" Welder Helper Smith off of his overtime assignment so that the Claimant could work the remaining overtime. The claim requests that the Claimant be paid an additional \$86.52 as compensation for the three hours of additional overtime that was denied him when junior employee Smith was permitted to work a full day's overtime.

The Carrier maintains that there was no violation of the Agreement. According to the Carrier, both the Claimant and Welder Helper Smith performed overtime on the day in question that was normally and customarily performed by them during their regularly assigned tours of duty. The Carrier argues that it was not contractually required to shift the Claimant to Welder Helper Smith's overtime assignment once the Claimant's assigned overtime task was completed. According to the Carrier Rule 17, Section 1(a) simply does not confer the right to relieve another employee on overtime under the circumstances presented in this case and, therefore, the claim must be denied.

As the moving party in this dispute, the Organization had the burden of establishing the elements of proof to support its claim. Based on our review, the Board finds that the Organization has not met its evidentiary burden in this matter.

The record developed on the property shows that Welder Helper Smith was called for overtime work in connection with his customary assignment. This crucial point was never refuted by the Organization. The Claimant's superior seniority in the Trackman class did not grant the Claimant the contractual right under Rule 17, Section 1 (a) to be called for the welding work in the first instance, nor did it provide a contractual right to relieve Welder Helper Smith after the Claimant's overtime work was completed. Both the Claimant and Welder Helper Smith were properly assigned overtime work on the date in question based on their respective job classifications in accordance with Rule 17, Section 1(a). The Organization failed to establish that the Claimant had a demand right to assume the welding work performed by Welder Helper Smith once the Claimant's work was completed. Accordingly, this claim must be denied.

AWARD

Claim denied.

Form 1
Page 4

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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 21st day of December 2004.