

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37960
Docket No. MW-37158
06-3-02-3-141**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 employee G. Mercado to perform overtime service (repair broken bar and switch frog) at Mile Post 257.8 and Mile Post 249.5 in Tulare, California on November 5, 2000 instead of calling and assigning Mr. P. J. Reyes, Jr. (Carrier's File 1258239 SPW).
- (2) As a consequence of the violation referenced in Part (1) above, Claimant P. J. Reyes, Jr., shall now be compensated for eight (8) 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.

The issue at bar is the proper assignment of overtime. The facts are undisputed. The Claimant was a District Boom Truck Driver with seniority over junior employee G. Mercado. The work performed belonged to the Welding Sub-department. There were no Welders or Helpers assigned to this area at the time of the dispute. All work performed was assigned to Olvera, Jr., a qualified Welder and when he was not available or needed help, to Mercado. On their rest day, Sunday, November 5, 2000, Manager Track Maintenance Maxwell called out Mercado to do welding work required to repair a broken angle bar at Mile Post 257.8 and a switch frog at Mile Post 249.5 in Tulare, California.

The Organization argues that the work performed belonged to the Welding Sub-department. It maintains that the welding work of Olvera and Mercado during the week was a daily assigned project and not associated with weekend overtime. When the overtime was performed there were absolutely no Welding Sub-department employees. Accordingly, this is a straightforward seniority issue in the assignment of the work. According to the Organization, assignment should have been made to the senior employee of the Track Sub-department. It contends that the failure to call the Claimant for the overtime violated the Agreement.

The Carrier argues that no Rule permits assignment of the work to the Claimant. Rule 8 assigns seniority in the Sub-department where seniority is held, i.e., the Welding Sub-department. Neither the Claimant, nor Mercado held Welder Helper seniority. In fact, Mercado worked as a Welder Helper during the entire project and was, therefore, considered the regular employee entitled to work on unassigned days. Had the Claimant any Agreement right to work in place of Mercado, such Agreement right would have extended to the straight time performed during the week, for which there was no claim.

The record demonstrates no evidence that the Claimant, a Truck Driver, could have performed the overtime work of welding a broken angle bar and switch frog. The Organization argues that this is covered by seniority (Rule 5). The

Carrier argues that the Claimant was the "regular employee" and, therefore, the work followed him (Rule 18k) and was incidental to a larger project. No Rule language explicitly applies to the instant circumstance. Rule 5 restricts seniority to classes and in numerical order, but does not resolve this dispute. The Carrier's resolution is more persuasive to these facts than the Organization's position that "all things being equal, seniority would prevail."

The Board does not find "all things being equal" in this set of facts. We conclude that there was no proof of a larger project or "regular employee." We also conclude that there was no evidence of record that the Claimant was able to perform the job. The Organization did not protest the junior employee doing the exact same welding during the entire week, but only this claim for the overtime on Sunday. While seniority rights are very important, they are not herein given preference by language to the instant set of facts. See, Third Division Awards 26210, 26252 and 29795.

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 19th day of September 2006.