

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39703
Docket No. MW-38012
09-3-NRAB-00003-030447
(03-3-447)**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to assign Mr. D. Jordan to perform overtime service at Rouses Point on March 2, 2002 and instead assigned junior employee J. Jackson. (Carrier’s File 8-00264 DHR)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Jordan shall now be compensated for sixteen (16) hours’ pay at the trackman’s time and one-half rate of pay and one and one-half (1.5) hours’ pay at the trackman’s 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 Organization contends that the Carrier improperly used a Trackman junior in seniority to the Claimant (Trackman J. Jackson) to perform overtime work in the vicinity of Rouses Point, New York, on March 2, 2002 in violation of Rule Nos. 1, 4, 11, and 15 of the current Agreement.

There is no question that the Claimant holds seniority as a Trackman with the Maintenance of Way Department dating from January 1, 1980, whereas Jackson has seniority as a Trackman dating from July 13, 1987.

The Carrier disputes the Organization contentions that there was a violation of Agreement Rules in having Trackman Jackson perform the overtime work at issue. It says that there was a derailment on its mainline at Rouses Point on the date of claim, March 2, 2002, and a need existed to call employees from other Sub-Divisions to assist in clearing the derailment.

The Claimant, who, at the time, held a permanent position as a System Equipment Operator (SEO) in another Sub-Division, was called and used to assist at the derailment site as an SEO. After working for a period of time at the derailment as an SEO, the Claimant was released from such derailment service. Trackman Jackson, who had also been summoned from another Sub-Division to work as a Trackman, along with other Trackmen, continued to work at the derailment site as a Trackman, for which service he was compensated 16 hours at the time and one-half rate of pay, and one and one-half hours at the Trackman's double time rate of pay.

Basically, it is the position of the Organization that notwithstanding the Claimant having been summoned to work at the derailment site as a SEO, that upon completion of such SEO work he should have been assigned to work as a Trackman in place of Trackman Jackson because he holds greater seniority in the Maintenance of Way Department as a Trackman.

The Board well recognizes, as the Organization states, that seniority is one of the most important cornerstones upon which Agreements are made, and included in Agreements to give preference to jobs and work opportunities, among other things.

The distinction the Board finds in the case at issue is that the Claimant was called under Agreement Rules to the derailment site to be used as a SEO, whereas Jackson was called to be used as a Trackman. In this respect, we do not read any of the seniority provisions as cited to give preference for overtime work in the order of seniority by allowing an employee to unilaterally move from the job classification for which called and used to a different job classification because work assigned to the latter job classification is going to be of a longer duration and will provide more overtime work. Therefore, because the Claimant was called and went on duty as a SEO, the Board finds no Agreement support for the contention that upon completion of assigned work as an SEO at the derailment site, the Claimant had a seniority right to immediately displace junior Trackman Jackson, who had been called for work at the derailment at the same time as the Claimant, and was working at the derailment site as a Trackman.

Clearly, the Board's decision would be different had any exercise of seniority rights occurred, at the very least, when called for work at the derailment site as a SEO and have asked to be used as a Trackman rather than as an SEO. An analogy would be that of someone being allowed to change a bet midway through a horserace once it was evident that the horse they had selected was not going to finish that day as the top money maker.

In view of the particular circumstance of record, the claim will be denied.

AWARD

Claim denied.

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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 26th day of May 2009.