

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 23

Case No. 82

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-2248 and CR-2249) that:

- (a) The Carrier has violated the current Schedule Agreement, as amended, on October 12, 13, and 14, 1985, when assigning Vehicle Operator R. E. Johns of the interlocking gang, to perform the duties of the Foreman when piloting and working with the CAT Tamper Unit and the Ballast Extra between South Boyle and North Miller on Sub-Division 12, Northumberland, Pennsylvania, instead of assigning such work to Track Foreman W. E. Cook who was senior, qualified, and available to perform this work on his advertised territory.
- (b) Claimant W. E. Cook shall be appropriately paid 17 hours at the Track Foreman's rate of pay for hours outside of his regular assigned hours.

FINDINGS:

Upon the whole record and all the evidence, after September 23, 1988 hearing in Washington, D. C., the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

On the basis of the confronting record the herein claim

is found to be meritorious under Rule 17 (PREFERENCE FOR OVERTIME WORK) of the applicable Schedule Agreement, reading as follows:

"RULE 17 - PREFERENCE FOR OVERTIME WORK

Employees 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 record reflects that the Claimant at times piloted the Burro Crane 3081 during his regular work week. The Carrier's submission asserts that Vehicle Operator R. E. Johns, the target of the claim, piloted the CAT Tamper Unit involved in the confronting dispute during his work week; but this contention does not appear in the Carrier's and parties' on-property correspondence.

These circumstances, in the Board's judgment, requires a sustaining Award on the claim. The Board has considered and found unpersuasive the Carrier's contention that the Gang Supervisor is required to consider only gang members in administering the overtime preference requirement of Rule 17. It is conceivable that a claim of the herein type might be found lacking in merit, where the circumstances are such that a Supervisor cannot reasonably be expected to look outside his particular gang to assign unplanned overtime. In the instant case, however, the facts of record do not indicate that an unreasonable burden was involved in calling the Claimant for the overtime in dispute.

Accordingly, in view of the foregoing, and based on the record as a whole, the claim will be sustained.

**AWARD:**

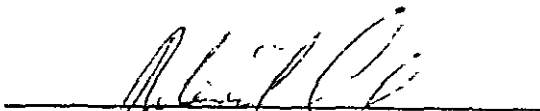

Claim sustained.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member

  
R. O'Neill, Carrier Member  
W. E. LaRue, Labor Member

Executed on Dec. 29, 1988

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