

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 22

Case No. 23

STATEMENT OF CLAIM

1. The Carrier violated the terms of the current Agreement when it failed to call and assign overtime work to Section Foreman Roger L. Kidenhour and instead assigned such overtime to Junior Trackman Mr. C. E. Criddle.

2. The Carrier shall now be required to compensate Claimant at his overtime rate of pay, in the amount equal to that worked by Junior employee Criddle.

F I N D I N G S

On May 1-6, 1989, the Carrier appointed a Laborer to relieve the district Track Supervisor, an exempt position. One of the duties of the Track Supervisor is to inspect track, and this work was performed by the employee temporarily appointed to the position.

The Claimant is a Foreman, senior in Foreman status to the employee selected to relieve the Supervisor. The Organization supports the Claimant's view that he should have been assigned the overtime hours worked by the Laborer during the period he relieved on the Track Supervisor position.

The Board finds no basis to support the Organization's position. The Scope Rule, Rule 1, specifically provides that the "agreement shall not apply to . . . supervisory forces above the rank of Foreman". No rule or practice was cited which inhibits the Carrier from selecting whom it chooses to perform exempt work. No allegation is made that the selected employee performed other than the work of Track Supervisor. The fact that the selected employee is represented by the BMW (and thus covered by the agreement in his regular assignment) does nothing to make him ineligible for selection for exempt work. The Claimant is without standing to exercise his seniority in reference to an exempt position.

As a procedural matter, the Carrier argues that the claim should be time barred, since an identical matter was raised at an earlier time and not progressed to the Board. The claim here, however, refers to a specific time (May 1-6, 1989) and the claim in reference thereto was filed within

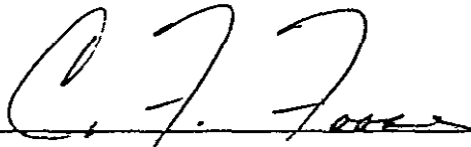
60 days. A previously abandoned claim does not prevent the initiation of another claim under new circumstances, although the settlement of the earlier claim may have precedential value as to the merits.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



C. F. FOOSE, Employee Member



R. J. SCHNEIDER, Carrier Member

NEW YORK, NY

DATED: