

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 50

Carrier File No. 4MWB 90-07-23A

Organization File No. T-M-719-B

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier failed to call Messrs. S. M. Mertens and L. E. Zirbes to perform overtime work on Monday, February 19, 1990 (President's Day holiday).

2. As a consequence of the above-stated violation, Claimants S. M. Mertens and L. E. Zirbes shall each be allowed eight (8) hours' pay at their respective time and one-half rates.

F I N D I N G S

There are three Maintenance of Way crews headquartered at St. Cloud, Minnesota. These are two section crews, St. Cloud (East) and St. Cloud (West), each of which are assigned fixed milepost limits within which each crew is responsible for maintenance. There is also the St. Cloud District Maintenance Crew, which is free to operate over the entire seniority district, including -- among others -- the St. Cloud (East) and the St. Cloud (West) sections.

On February 19, 1990, the Presidents Day holiday, work was required in the St. Cloud (West) section for snow removal on an overtime basis. The Foreman first called employees from the St. Cloud (West) section, and when this proved insufficient he called two additional employees from the St. Cloud (East) section.

The Claimants are two members of the St. Cloud District Maintenance Crew. It is the Organization's contention that they, rather than St. Cloud (East) section members, should have been called for the overtime service to supplement the St. Cloud (West) employees.

The pertinent rule here is Rule 24I, which reads as follows:

Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who would otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

There is no issue here as to employees having less than 40 hours' work in the week. The "regular employee[s]" are obviously the St. Cloud (West) section members. Beyond this, the rule does not specify who, if anyone, must be called for overtime. The Organization rests on the theory that the District Maintenance Crew should have preference, because it may work at times in the territory of and/or with the St. Cloud (West) section. There is no showing, however, that there is any established practice of such accepted preference in overtime assignment.

The District Maintenance Crew may work in the affected section at times; it does not follow, however, that this qualifies the crew

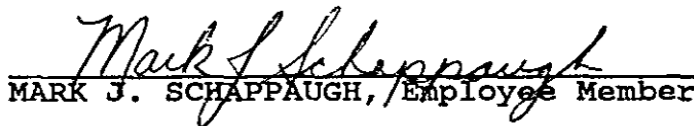
as "regular" employees of the section. It follows that there is no rule violation in the Carrier's action in calling employees from the neighboring section for the overtime work.

A W A R D

Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D J. MERRELL, Carrier Member

NEW YORK, NY

DATED: 2/24/1994