

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 167

Case No. 167

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Consolidated Rail Corporation

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned junior B&B Foreman F. Hartley and junior B&B Mechanic D. Hones to perform overtime service at Bridge 244.28 on Sunday, August 27, 1995, instead of calling and assigning senior B&B Foreman E. **Gallis** and senior **B&B** Mechanic C. T. Julian to perform such work (System Docket MW-4254).

2. As a consequence of the violation referred to in Part **(1)** above, Claimants E. **Gallis** and C. T. Julian shall each be allowed the difference between the ten **(10)** hours' straight, time rate the Carrier paid them to settle the claim and the twelve (12) hours' pay at their respective time and one-half rate they would have earned had they been properly called and assigned to the work in question.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and

2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

A careful review of the record indicates that the Organization proved that the Carrier assigned junior employees to perform the disputed work.

Rule 17, titled Preference for Overtime Work, provides in pertinent part:

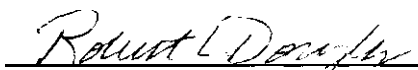
Employees will, if qualified and available, be given

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 a derailment occurred on or about Sunday, August 27, 1995 at 7:00 a.m. and that the damage caused by the derailment necessitated the performance of the disputed work. The record omits any evidence that the Organization challenged the representation by the Carrier that the junior employees had lived closest to the site of the derailment or that the Claimants had lived a more prohibitive distance from the derailment site. Due to the need to make the repairs in a timely fashion after the derailment, insufficient evidence exists to prove that the Carrier committed a contractual violation by assigning the disputed work to the junior employees under the special circumstances set forth in the record.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01