

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 170
Case No. 170

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 **Trackman** C. A. Gailey to perform overtime service on a crossing in the Juniata Shops near Fourth Street at Altoona, Pennsylvania on July 27, 1996, instead of calling and assigning senior **Trackman** R. A. Zonts to perform said work (System Docket MW-4516).
2. As a consequence of the violation referred to in Part (1) above, Claimant R. A. Zonts shall be allowed nine (9) **hours'** pay at the trackman's time and one half rate.

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 a junior employee 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 the Carrier failed to rebut the Claimant's assertion that the Carrier had called the employees on the first half of the alphabetical snow roster to perform the disputed work. Rule 17 requires the use of seniority for assigning employees to perform the disputed work. The apparent use of the snow roster to make the disputed assignment fails to conform with the contractual requirement to assign such work based on relative seniority.

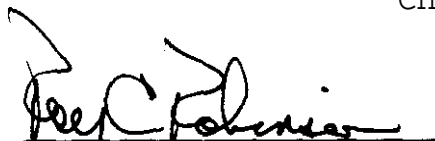
The uncontroverted evidence of the use of the alphabetical snow roster therefore negates the representation by the Carrier's representative that an unsuccessful attempt had been made to contact the Claimant--whose name clearly falls at the end of the snow roster--to determine the Claimant's availability to perform the disputed work. The absence of the necessary effort by the representative of the Carrier to contact the Claimant for the overtime assignment precludes a finding that the Claimant had become unavailable to perform the disputed work.

The Claimant had a contractual right to be offered the disputed work assignment based on the Claimant's seniority. By failing to offer the overtime assignment in such a manner, the Carrier failed to comply with the applicable contractual provision.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


 . Robert L. Douglas
 Chairman and Neutral Member


 R. P. Robinson
 Employee Member


 D. L. Kerby
 Carrier Member

Dated: 9/6/01