

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 171
Case No. 171

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 Welder A. L. Kohler to perform overtime service (repair a broken rail) at Mile Post 208.9 on the Pittsburgh Line on October 13, 1996 instead of assigning senior Welder R. J. Hare (System Docket MW-4573).
2. As a consequence of the violation referred to in Part (1) above, Mr. R. J. Hare shall be compensated for ten (10) hours' pay at the welder's time and one half rate with credit for the day for benefits and vacation purposes.

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.

Rule 17 requires the use of seniority for assigning **employees to** perform the disputed work.

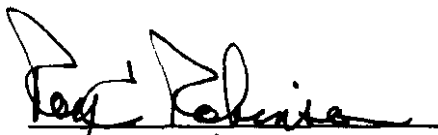
The Carrier's representative apparently had a genuine belief that the Claimant did not want to work the disputed overtime. The record, however, omits any concrete evidence to support the validity of that conclusion. In the absence of such persuasive evidence, the representative of the Carrier retained a contractual obligation to attempt to reach the Claimant to verify that the Claimant actually had disavowed any interest in performing 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 unwilling or 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 under the special facts of the instant case.

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. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

D a t e d : 9/6/01