

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 173  
Case No. 173

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 Mr. H. M. Hockenberry to perform overtime service operating a front end loader on the Lurgan Branch and Shippensburg Secondary on September 7, 8 and 25, 1996, instead of assigning Machine Operator E. K. Crummel to perform said work (System Dockets MW-4643 and MW-4644).
2. As a consequence of the violation referred to in Part (1) above, Mr. E. K. Crummel shall be allowed thirty-eight (38) hours' pay at the machine operator'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 had 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 therefore requires the use of seniority for assigning employees to perform the disputed work.

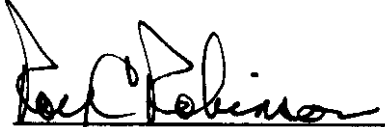
The Claimant had a contractual right to be offered the disputed work assignment based on the Claimant's seniority and work assignment during the relevant time. By failing to offer the overtime assignment in such a manner, the Carrier improperly overlooked the Claimant and thereby failed to comply with the applicable contractual provision under the special facts of the instant case.

In addition, the record contains sufficient persuasive evidence to substantiate that the Organization provided the requisite information to the Carrier about the combined claims during the handling of the dispute on the property. As a result, the Organization did not mislead the Carrier about the dispute and provided persuasive evidence to prove the validity of the entire claim.

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.

  
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Robert L. Douglas  
Chairman and Neutral Member

  
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R. D. Robinson  
Employee Member

  
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D. L. Kerby  
Carrier Member

Dated: 9/6/01