

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 175
Case No. 175

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 Foreman D. W. Hurst to perform machine operator's duties (operate a backhoe) while repairing sun kinks at Mile Post 287 and Mile Post 3 on July 6, 1996, instead of assigning Machine Operator M. J. Daly (System Docket MW-4823).
2. As a consequence of the violation referred to in Part (1) above, Machine Operator M. **J.** Daly shall be allowed nine (9) 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 Track Foreman Hurst performed 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.

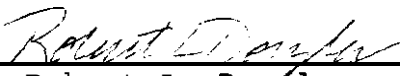
Rule 17 therefore requires the Carrier to give preference for overtime work to qualified and available employees by using seniority and by considering which employee has ordinarily and customarily performed the disputed work.

The Claimant had a contractual right to be offered the disputed work assignment based on the Claimant's seniority and work assignment. In particular, the record proves that the Claimant had ordinarily and customarily operated a backhoe during the relevant time. By failing to make any effort to offer the disputed overtime assignment to the Claimant, 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 reaching this conclusion, the record omits any indication from the Carrier that an emergency situation had existed that even arguably necessitated the performance of the disputed work at the specific time by the Track Foreman.

With respect to a remedy, the record reflects that the Track Foreman had performed other work (changing out and replacing an insulated joint) on the same day as the Track Foreman performed the disputed work. As monetary compensation for the contractual violation, the Claimant therefore shall be allowed four and **one-half (4½)** hours' pay at the Machine Operator's time and one-half rate.

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