SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 176
Case No. I76

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 called and assigned Foreman R. Y. Harbison to perform overtime service (inspect and oil switches) in the Niagara Yards, Niagara, New York May 12 and 17, 1997 instead of calling and assigning I&R Foreman R. N. Schlegel to perform said work (System Dockets MW-4929 and MW-4985).

2. As a consequence of the violation referred to in Part (1) above, I&R Foreman R. N. Schlegel shall be allowed seven (7) hours' pay at the 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 Foreman Harbison 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 presumption that the junior employee ordinarily and customarily performs this specific type of disputed work. In particular, the record omits any credible evidence to negate the fact that the Claimant had ordinarily and customarily inspected and repaired switches at the Niagara Yard. 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 Foreman Harbison.

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

Dated: 9/6/01