

SPECIAL BOARD OF ADJUSTMENT 1016

Case No. 206

Award No. 206

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 I&R Foreman Sangrey to perform maintenance work on April 19 and 20, 1997, instead of assigning Maintenance Gang Vehicle Operator T. P. Gurrera to perform the work.

(2) As a consequence of the violation referred to in Part (1) above, Claimant T. P. Gurrera shall be allowed at the track foreman time and one-half rate of pay all the overtime hours that was (sic) made by the I&R Foreman on the claim dates.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On April 19 and 20, 1997, the Claimant was assigned to a maintenance gang headquartered at Conowingo, Maryland on the Port Road Branch Subdivision of the Harrisburg Seniority District. He was a Vehicle Operator. Saturday and Sunday were his regular days off.

On Saturday, April 19 and Sunday, April 20, 1997 an on-track rail grinding machine was on the Port Road Branch. The machine was being used in rail grinding work on the branch. The Carrier assigned an I&R Foreman to accompany the machine and provide fire protection on the Carrier's right of way. The I&R Foreman who was assigned this fire protection responsibility is not regularly assigned to the Port Road Branch Subdivision.

On April 27, 1997, the Organization filed a claim on behalf of the Claimant contending that he should have been given preference to the overtime worked by the I&R Foreman on April 19 and 20, 1997. Conrail denied the claim arguing, among other things, that there is no classification of "*fire fighter*" in the parties' Scope Rule and that the work assigned to the I&R Foreman does not accrue to any particular class or craft of employees.

The Carrier avers that the Organization improperly amended the claim during the on property appeals process but this Board respectfully disagrees.

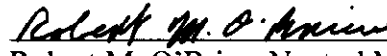
It is true that the Organization's initial claim incorrectly identified the Claimant as a Track Foreman. When Conrail denied that claim it corrected this error and stated that the Claimant was a Vehicle Operator, not a Track Foreman. However, this was not a material amendment of the claim. The gravamen of the claim remained the same throughout the on property appeal process, namely that the Claimant should have been given preference to the fire protection responsibility on April 19 and 20, 1997. Therefore, in this Board's opinion, there was no improper amendment of the claim as the Carrier asserts and we find that it is properly before us.

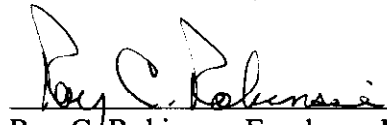
This Board recognizes that the parties' Scope Rule does not include a classification of "*fire fighter*." The work of providing fire protection to the Carrier's right of way does not accrue to any particular craft or class of employees on Conrail. Nevertheless, in our view, the Claimant was entitled to preference to the overtime performed on April 19 and 20, 1997.

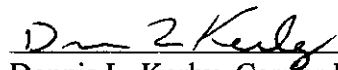
It must be stressed that on April 19 and 20, 1997, the rail grinding machine operated on the Port Road Branch Subdivision where the Claimant is regularly assigned. Conrail assigned an I&R Foreman from another subdivision to provide fire protection to its right of way on the Port Road Branch Subdivision. The Claimant had a preference to overtime on his regular subdivision before the overtime was offered to an employee regularly assigned to a separate subdivision, in our opinion. Accordingly, the Claimant should have been assigned to provide fire protection on the Port Road Branch Subdivision on April 19 and 20, 1997, his regular rest days. He must therefore be made whole for the overtime denied him on his two rest days.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective
on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Roy C. Robinson, Employee Member


Dennis L. Kerby, Carrier Member

Dated: 4/30/02