

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 35

Case No. 35

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned junior employees M. F. McCormick, D. E. Baltimore, J. D. Rauch and T. Newton instead of Welder S. L. Vesnefskie and Welder Helpers R. Smith and T. A. Ebby to perform overtime welding work at Chester, Pennsylvania on October 3 and 5, 1986 (System Dockets CR-2847, CR-2845 and CR-2844).

(2) As a consequence of the aforesaid violation:

- (a) Welder S. L. Vesnefskie shall be allowed pay at the welder's time and one-half rate for the number of hours worked by Mr. M. F. McCormick on October 3 and 5, 1986.
- (b) Welder Helper R. Smith shall be allowed pay at the welder helper's time and one-half rate for the number of hours worked by Messrs. J. D. Rauch and D. E. Baltimore on October 3 and 5, 1986.
- (c) Welder Helper T. A. Ebby shall be allowed pay at the welder helper's time and one-half rate for the number of hours worked by Mr. T. Newton on October 3 and 5, 1986.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on August 17, 1989, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The case arises from claims of three (3) Claimants, a Welder and two (2) Welder Helpers, who allege that rest day overtime which they were entitled to work under Rule 17, was improperly assigned by the Carrier to junior men on October 3 and 5, 1986. The Claimants request compensation under Rule 17 in amounts equivalent to the overtime compensation paid to the junior men.

The pertinent facts are that prior to this dispute Rail Gang 101 was installing rail on the Chester Branch, Chester, Pennsylvania. Three Welding Crews comprised of seventeen (17) men were attached to the Rail Gang. When the rail laying portion of the Chester work was completed, the majority of the Gang moved to Linden, New Jersey, a distance of eighty-five (85) miles; since Welders were to be retained at Chester, the seventeen Welders on the crews were canvassed by seniority to determine who remained at Chester and who went to Linden. The three Claimants chose to go to Linden.

Two Welding Crews, including the Claimants, moved on to Linden; they headquartered and worked there the week of September 29, 1986. The other Welding Crew remained in Chester; it headquartered, lodged, and worked there the same week.

The work at Chester was scheduled to be completed in the week of September 29 - October 2, 1986; however, this schedule was not met and overtime was needed on October 3 and 5, 1986. The Carrier called a Welder and two Welder Helpers to perform the

work, which, because it was on the rest days of the Welding Crews in Rail Gang 101, was performed at overtime rates.

Rule 17 reads as follows:

"RULE 17 - PREFERENCE FOR OVERTIME WORK

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."

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After due study of the whole record, including the arguments presented by the parties' submissions in support of their positions in the case, it is concluded and found that the claims lack merit and that on that basis, a denial Award is in order.<sup>1</sup>

The Board finds significance in the fact that the herein Claimants, when polled by seniority, elected to leave Chester and move to Linden, New Jersey when the rail laying work at Chester was completed. They were headquartered and worked at Linden during the week of September 29, 1986, while, during the same week, another Welding Crew remained headquartered at Chester for work there.

Since the Claimant's presence at Linden was the result of the seniority preference they expressed in the poll, it logically follows that the Claimants' election against remaining headquart-

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<sup>1</sup> All prior authorities submitted of record were considered and studied in the determination of these claims.

ered at Chester carried with it the understanding that any Chester overtime worked continuously with the regularly assigned shift, would be worked by the Welders assigned to such shift at Chester, with the same applying to overtime work at Linden. Once one recognizes that regular work week overtime at Chester is to worked by the Welding Crew at Chester, there is simply no basis for concluding that the overtime work which accrues on a rest day would or should be assigned to a different crew.

In view of the foregoing, and based on the record as a whole, it is concluded that the circumstances of this case do not establish a meritorious grievance and on that basis, the grievance will be denied.

This ruling shall not be a precedent except where the circumstances are the same as the particular circumstances of this case.

AWARD:

Claims denied.

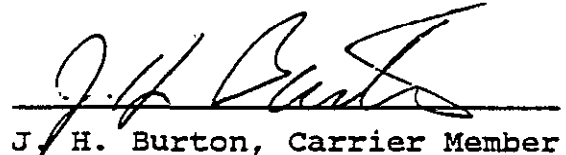
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

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