

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 42

Case No. 42

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 B&B Mechanic M. E. Flanigan, instead of B&B Mechanic G. Y. Dale, to perform overtime work at Mile Post 199.1 in McElhattan, Pennsylvania, on November 18, 1986 (System Docket CR-2930).

(2) As a consequence of the aforesaid violation, Claimant G. Y. Dale shall be allowed fourteen and one-half (14.5) hours at his time and one-half rate.

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

Claimant B&B Mechanic Dale alleges that the Carrier improperly called junior B&B Mechanic Flanigan to work overtime at a derailment at Mile Post 199.1 McElhattan, Pennsylvania, on November 18, 1986, and that he is entitled to be compensated for the

overtime of which he was deprived.

The Carrier asserts that Mechanic Flanigan was called instead of Claimant Dale because an emergency existed, and Mr. Flanigan lived closer than the Claimant to a supply point for material needed at the derailment site.

The pertinent facts are that a Conrail train derailed at 4:07 P.M. on November 18, 1986, at Mile Post 199.1 McElhattan, Pennsylvania, on the Buffalo Line. The derailment left two (2) engines on their sides, leaking fuel oil into a nearby stream. At 5 P.M., Foreman Girolami was notified of the derailment; he in turn called Mr. Flanigan to report as soon as possible as absorbent material was needed at the wreck site to contain and absorb the oil spill. The material was to be obtained at and hauled to the derailment site from Williamsport, Pennsylvania, the headquarters point of both the Claimant and Mr. Flanigan.

Mr. Flanigan lives in Linden, Pennsylvania, which is located approximately five (5) miles from Williamsport, whereas Claimant Dale lives in Rebersburg, Pennsylvania, approximately forty-five (45) miles from Williamsport.

Upon arrival at the derailment site, Foreman Girolami and the Claimant observed that the local fire department had already spread out plastic sheeting and had constructed a catch basin for the leaking oil fuel. Messrs. Girolami and Flanigan went to dinner and returned to the work site at 9 P.M. to commence work on the spill.

* * * * *

After due study of the foregoing and of the whole record, including arguments presented by the parties' submissions in support of their positions in the case, the Board concludes and finds that the record does not show the claim to be meritorious.

The Board finds further that the Carrier was not required in the circumstances of the November 18, 1986 derailment incident to call Claimant Dale. The belief that the derailment work would be expedited by calling the Mechanic who lived closer to the supply site of the absorbent material, was not unreasonable or arbitrary. Furthermore, although Foreman Girolami and Mr. Flanigan did not actually commence work to clean up the spill until 9 P.M., a starting time that the Claimant could probably have met as well as Mr. Flanigan, there is no showing of record that information available at 5 P.M. indicated that such a delay in starting the work would occur; consequently, there is no basis for finding the Carrier action to have been violative of the Agreement.

In view of the foregoing, and based on the record as a whole, it is concluded that the claim must be denied for lack of evidentiary support.

AWARD:

Claim denied for lack of requisite evidentiary support.

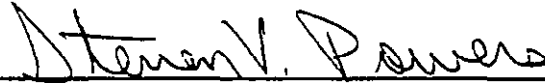
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016

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Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

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