

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM:

In violation of Rules 1, 3, 5, 17 and 41, Carrier assigned two junior employees and two foremen, instead of J. Aronis, to overtime work constructing a retaining wall.

FINDINGS:

Unlike claimant, one of the foreman and the two employees junior to claimant had performed that work during the same work week. The other foreman was assigned to work and provide leadership to the construction. The work took ten hours to perform. Carrier's use of the junior employees and the foreman who had been on that wall construction work during the week is not incompatible with the terms of the applicable agreement. Rule 17 provides:

"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."

The language just quoted is clearly relevant to the situation before us. There is no indication that

the junior employees or foreman who had previously performed the work were not qualified or available. We will deny the claim as to the use of those three men.

The assignment of the second foreman, however, is another question. He had not been on that job earlier in the work week or day. We find Carrier's point untenable, in the absence of additional particulars, that he was required to provide supervision. There is no showing that he had specialized expertise needed in the job or other qualities that would require his use for the overtime work instead of claimant.

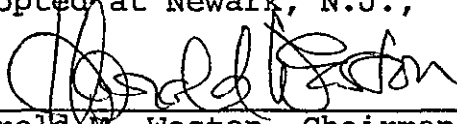
We are aware that Rule 1 shows that B&B foremen duties are to "direct and work with employees assigned under his jurisdiction." The problem is that there is no proof that his services were required when another foreman was already assigned to the job. Strained assertions may be accepted in an appropriate situation, but only when supported by persuasive evidence.

The claim will be sustained to the extent of the number of hours, not exceeding ten, devoted to the work in question on Saturday, March 2, 1985. In view of the nature of the claim, this is a valid exception to the general rule that overtime

pay will not be allowed for overtime not actually worked.

AWARD: Claim sustained to the extent indicated in last paragraph of Findings. To be effective within 30 days.

Adopted at Newark, N.J., *October 19*, 1987.



Harold M. Weston, Chairman

JS BAKER

Carrier Member

dh E. LaRue

Employee Member