

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 165
Case No. 165

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 and permitted junior employee W. H. Berger to perform additional overtime service (snow duty) on December 11, 1995 instead of assigning senior employee S. A. Newlan to perform said work (System Docket MW-4222).
2. As a consequence of the violation referred to in Part (1) above, Mr. S. A. Newlan shall be allowed ". . . the difference in wages between himself and Mr. Berger for the 24 hour time period of December 11, 1995."

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:

Rule 4 (Seniority) provides, in pertinent part, that:

Section 1. Seniority date.

(a) Except as provided in Rule 3, Section 5, seniority begins at the time the employee's pay starts. If two (2) or more employees start to work on the same day, their seniority rank on the roster will be in alphabetical order. An employee assigned to a position of higher class than trackman will begin to earn seniority in such higher class and lower class on the same

seniority roster in which he has not previously acquired seniority from the date first awarded an advertised position in such higher class. He will retain and accumulate seniority in the lower class from which assigned. An employee entering service in a class above that of trackman will acquire seniority in that class from the date assigned to an advertised position and will establish seniority as of the same date in all lower classes on the same seniority roster.

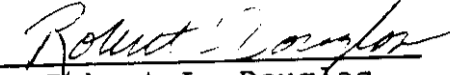
Rule 17 (Preference for Overtime Work) provides, in pertinent part, that:

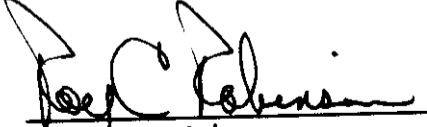
Employees will, if qualified and available, be given preference for overtime work, including calls on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority.

A careful review of the record indicates that the Claimant served as a Trackman/Operator in Gang RM 2212 and the employee who performed the disputed work held a Class 2 Machine Operator position in the same gang. The employees therefore did not occupy the same classification and necessarily were on different seniority rosters and received different rates of pay. Although the employees on Gang RM 2212 performed the work of sweeping and shoveling snow from track switches on December 11, 1995, the record omits any evidence to indicate that the employees performed such work in close proximity to each other. As a result, the record omits sufficient evidence to prove that the Claimant was in a suitable location to perform the disputed work. In the absence of such important evidence, the record omits persuasive evidence that the Carrier had acted in an arbitrary manner by failing to assign the disputed work to the Claimant.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01