

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 166
Case No. 166

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 called and assigned junior I&R Foreman A. L. Degroot to perform overtime service (inspect tracks) at Mile Post 429 on June 30, 1995, instead of calling and assigning senior I&R Foreman L. Soto to perform said work (System Docket MW-4239).
2. As a consequence of the violation referred to in Part (1) above, I&R Foreman L. Soto shall be compensated for "2.7 hours at the time and one half rate of pay for the hours worked by junior I&R Foreman A. L. Degroot ID#425912 on June 30, 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:

A careful review of the record indicates that the Organization proved that the Carrier assigned a junior employee to perform the disputed work.

Rule 17, titled Preference for Overtime Work, provides in pertinent part:

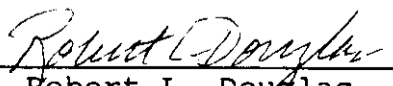
Employees will, if qualified and available, be given preference for overtime work, including calls, on


work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority.

The record reflects that the representative of the Carrier misconstrued the Claimant's concern about not having access to a truck owned by the Carrier for transportation from the Claimant's residence to the location where the Claimant reported for work. The record omits any persuasive evidence that the Claimant had abandoned, disavowed, or rejected his contractual right to be offered the disputed work assignment based on seniority. The Claimant therefore retained the right to be offered such an overtime assignment so that the Claimant could decide whether to accept such an assignment. By failing to offer the overtime assignment to the Claimant, the Carrier failed to comply with the applicable contractual provision.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01