

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 169
Case No. 169

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 failed to assign Class I Operator R. Spehar to perform overtime service on May 31, 1996 repairing the tamper torsion beam to which he was assigned but improperly withheld from by the Carrier and instead assigned Class II Operator M. Burke (System Docket MW-4480).
2. As a consequence of the violation referred to in Part (1) above, Class I Operator R. Spehar shall be allowed ten (10) hours' pay at his time and one-half rate.

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 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.

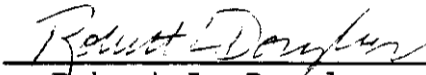
A careful review of the record indicates that the Claimant served as a Class I Machine Operator; that the Carrier had assigned the

Claimant to operate a torsion beam tamper on a project gang headquartered in Camp Cars; and that during the relevant time the Claimant worked in such capacity in Shire Oaks, Pennsylvania until the Carrier actually reassigned the Claimant to Pitcairn, Pennsylvania on June 3, 1996.

The record substantiates that the disputed work occurred on Friday, May 31, 1996 in Pitcairn, Pennsylvania. The record omits any evidence to connect the Claimant to the disputed work as of May 31, 1996 because the Carrier had not actually assigned the Claimant to Pitcairn as of May 31, 1996. In the absence of any such connection by the Claimant to the machine at the relevant time, the record fails to provide a factual basis to sustain the claim.

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