

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 56

Case No. 56

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 Agreement was violated when the Carrier called and assigned Junior Foreman P. Girard instead of Mr. H. Shick to perform overtime service at Mile Post 66 in Alliance, Ohio on May 30, 1987 (System Docket CR-3400).

(2) As a consequence of the aforesaid violation, Mr. H. Shick shall be allowed sixteen (16) hours of pay at the foreman's time and one-half overtime rate.

FINDINGS:

*Upon the whole record and all the evidence, and after hearing on September 6, 1990, 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.*

DECISION:

Claim Denied.

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**OPINION**

This case arises from a claim filed in behalf of Claimant H. D. Shick on June 30, 1987, alleging that on May 30, 1987, the Carrier called Junior Foreman P. Girard to perform work that the Claimant should have been called to perform, thereby improperly by-passing the Claimant for overtime work under Rule 17 of the Conrail-BMWE Agreement.

On the date of the overtime by-pass, Claimant Shick was assigned to the position of Foreman of an I&C Gang at Meadville, Pennsylvania, with a tour of duty 7 A.M. - 3:30 P.M. There is no question that Foreman Shick is senior to Foreman Girard.

The requested remedy is that the Carrier pay Claimant Shick compensation equivalent to the sixteen (16) hours of overtime worked by Foreman Girard on May 30, 1987.

The Carrier says that the claim lacks merit, because there was an emergency due to a derailment of a westbound train between Alliance and Hudson, Ohio, and because the junior Employee, Foreman Girard, lived four (4) miles from the derailment site, whereas Claimant Shick lived one hundred (100) miles from the site.

Rule 17 reads as follows:

**"RULE 17 - PREFERENCE FOR OVERTIME WORK**

*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 discloses that on May 30, 1987, a 17-car westbound train derailed between Alliance and Hudson, Ohio, resulting in the blockage of both main tracks for a period of twelve (12) hours. The track on which the derailment occurred was blocked for a period of forty (40) hours.

At approximately 7 P.M. on May 30, 1987, the Carrier called several Employees to work at the derailment site, including Foreman P. Girard, who was the Foreman of a Surfacing Gang working in the Alliance, Ohio area, with a tour of duty of 7 A.M. - 3:30 P.M. Foreman Girard performed sixteen (16) hours of overtime work at the derailment site.

In assessing these circumstances, and the whole record, including the submissions presented by the parties in support of their positions in the case, the Board finds that emergency conditions existed at the derailment site on May 30, 1987, and that Foreman Girard's travel distance from residence to the derailment site was significantly less than that of Claimant Shick, four (4) miles and one hundred (100) miles, respectively. The Board further finds that NRAB authorities have long treated emergency conditions as an exception to provisions, such as Rule 17 of the Conrail-BMWE Agreement, that require preference in the assignment of overtime work.

In these circumstances, the Carrier had a reasonable basis for calling a Foreman junior to Claimant Shick and hence, the Carrier's action in calling Foreman Girard instead of Claimant Shick cannot be said to have violated Rule 17 of the confronting agreement.

In view of the foregoing, and based on the record as a whole, the Board


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concludes that the claim lacks merit and that a denial award is in order.

AWARD:

The record as a whole does not establish the validity of the claim and accordingly, the claim is hereby denied.

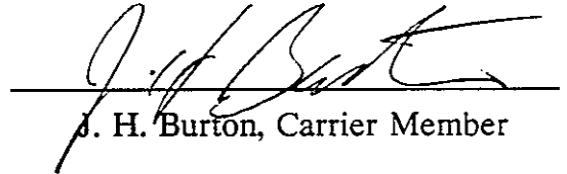
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on 1/18, 1993

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