

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mr. J. Hartman to perform overtime service on September 9, 1984 instead of calling and using Mr. B. Ecker who was available, senior and willing to perform that service (System Docket CR-1246).

(2) Claimant B. Ecker shall be allowed twelve (12) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is a Boom Truck Operator who also holds seniority as a Foreman. His claim concerns overtime work performed by a junior employee, who also holds Foreman seniority, on Sunday, September 9, 1984, as a Pilot for Track Broom BR 1147.

The Carrier's response was that the junior employee worked as Pilot for the Track Broom "during the entire workweek preceding the date of the overtime," while the Claimant "held a vehicle operator position and worked in that capacity for the entire workweek."

In response, the Organization provided signed statements from two employees contending that the Claimant had performed the piloting work on Friday, September 7, 1984. The Carrier provided no evidence on the property

contrary to these statements. The Carrier offered a time record sheet for that date in its Submission, but the Board cannot consider this, as it was not presented on the property. Further, this time sheet does not demonstrate to the Board any proof of the Carrier's contention concerning the Claimant's work assignment immediately prior to September 9, 1984.

Rule 17 is applicable to such situations and 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."

Based on evidence presented on the property, the Board finds that the Claimant was denied his seniority rights under Rule 17 to perform the piloting work on September 9, 1984.

The Board finds that the claim for pay at the premium rate is appropriate, in keeping with general practice on this Division and in view of the fact that such was not contested by the Carrier in the claims handling procedure on the property.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dezer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.