

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29536  
Docket No. MW-29701  
93-3-91-3-45

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance  
(of Way Employes  
(  
(CSX Transportation, Inc. (former  
(Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employe B. R. Scott instead of Ms. C. Williams to perform overtime service on the Big Manatee River Bridge on the Tampa Division Seniority District on November 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 29, 30, December 1, 3, 9, 16, 17, 23, 30 and 31, 1989 [System File CW-90-2/12(90-245) SSY].

(2) As a consequence of the aforesaid violation, Bridge Tender C. Williams shall be allowed two thousand seven hundred fifty-seven dollars and eighty-two cents (\$2,757.82)."

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 employe 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.

Claimant was hired by the Carrier in its Tampa Division as a Bridge Tender on December 2, 1974. B. R. Scott established seniority as a Bridge Tender on August 7, 1979, making him the junior employee. Both individuals were assigned to the Big Manatee River Bridge on November 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 29, 30, December 1, 3, 9, 16, 17, 23, 30 and 31, 1989. On those dates overtime work was available. The junior employee worked the overtime, which totalled 154.50 hours.

The Organization asserts that the Carrier violated Agreement Rules 5, 6, 20, 26 and 27 because it bypassed Claimant, and assigned the junior employee overtime on the dates in question. The Organization contends that the value of the overtime was \$2,757.72, which should be paid to Claimant.

The Carrier maintains that when the Supervisor spoke with Claimant regarding overtime, she initially declined the additional hours, and agreed that the junior employee would be the Bridge Tender called when overtime was necessary. The Carrier contends that Claimant did not inform any Carrier representative that she changed her mind. The Carrier points out that the junior employee also asked Claimant to work some of the overtime, but she did not respond to his question.

The Organization contends that it is the Carrier's duty to inform the senior employee of the availability of overtime, and that a request made by a junior employee does not meet this requirement. The Organization points out that the Carrier issued a written document instructing the Supervisor to contact the junior employee when overtime was required, and later rescinded that instruction. The Organization alleges that Claimant continually objected to the Carrier granting overtime to the junior employee. In support of its claim that Claimant was willing to work the overtime in question, the Organization maintains that she worked all available overtime prior to September 25, 1989, and resumed working all available overtime when the Carrier rescinded its written instruction regarding the junior employee.

It is clear that Claimant was the senior Bridge Tender at the time of the available overtime. The central question then is whether Claimant rejected the overtime, thus opening the door to the junior employee.

Rule 27-Overtime, Section 8 states:

"When overtime service is required of part of a gang continuous with, before or after the regular work period, the senior available qualified employees in the rank involved shall have preference to such overtime if they so desire."

The Board interprets Rule 27, Section 8 to mean that each time overtime is available the "senior available qualified employee" is to be given first opportunity for the work. This interpretation is supported by Awards submitted by the Organization. In Third Division Award 24164 the Board stated:

"...seniority must be considered in assigning work and certain Awards cited by the Organization have indicated that inability to work on one day **does not necessarily equate with inability to work on subsequent days.**"


Third Division Award 24332 supports a similar finding. Further, Third Division Award 25926 and 27882 sustain a finding that an employee is not required to take the initiative in order to be eligible to work available overtime, "especially where he may have no advance knowledge of the assignment of other employees."

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.