

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29897
Docket No. MW-29360
93-3-90-3-274

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier assigned junior Vehicle Operator M. S. Lego instead of Mr. G. W. Patterson to perform overtime service on Sunday, December 18, 1988 (System Docket MW-341).
- (2) As a consequence of the aforesaid violation, Mr. G. W. Patterson shall be allowed eight (8) hours of pay at the vehicle operator's time and one-half rate."

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.

The basic facts are undisputed. The Claimant holds seniority as a vehicle operator in the Track Department on the Allegheny "A" Seniority District. The employe assigned has also established and holds seniority as a vehicle operator in the Track Department on the Allegheny "A" Seniority District, however his seniority is junior of that of the Claimant. Prior to the date this dispute arose, effective at the close of work on December 15, 1988, both the junior employe and the Claimant's jobs were abolished. On Sunday, December 18, 1988, the Carrier called and assigned the

junior Vehicle Operator to drive a vehicle from Altoona, Pennsylvania, to Cherry Tree, Pennsylvania, instead of calling and assigning the Claimant.

On August 17, 1989, the Carrier sent the following letter to the Organization:

"This refers to our meeting July 5, 1989, regarding claim of G. Patterson for 8 hours overtime account of junior employee M. Lego working overtime December 18, 1988.

This is to advise the claimant will be allowed 8 hours at his then prevailing straight time rate of pay. That portion of the claim for overtime is excessive and it is denied."

On August 23, 1989, a Carrier Official at Altoona, Pennsylvania, sent the following letter to the Organization:

"This is in reference to Harrisburg Division Case No. H0589020, System Docket No. MW-341, discussed at the System Office on July 5, 1989 concerning claim on behalf of G. W. Patterson for an alleged violation on December 18, 1988.

As agreed, claimant G. W. Patterson #204612 will be allowed eight (8) hours at the straight time rate of pay of \$13.40 per hour for December 18, 1988 as full, final and complete settlement of this claim.

Copies of this letter are being forward to the Division Engineer to insert amount due Claimant in space provided below, after which copy of this completed letter will be mailed to you and also the Claimant."

The Carrier argues (1) that the August 23, 1989, letter reflects a complete settlement of the claim and, therefore, there is no issue before the Board and (2) in any event straight time is the appropriate remedy for time not worked. The Organization (1) objects to the August 23, 1989, letter as not being handled on the property and (2) contends that overtime is the proper rate for a claim of this nature.

First, the Board must disagree that the August 23 letter is an agreement to settle the claim for straight time. The earlier letter between the highest level officers for each respective party, who presumably conferenced the claim, reflects that they were still at odds over whether straight time or overtime was the proper remedy. The August 23 letter appears to be a form letter between officials at a lower step whose primary function is to implement on the local level the Carrier decision to pay the Claimant straight time.

Clearly there is a valid dispute before the Board concerning whether straight time or overtime is the appropriate remedy under these circumstances. It is our conclusion given, the history of this issue on the property and given the fact that there is nothing in the record to rebut the presumption that if called for the Sunday work in question, the Claimant would have received overtime, that the Claimant is entitled to eight hours overtime. He shall be compensated for the difference between straight time and overtime at the relevant rate of pay.

A W A R D

The claim is sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.