

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31453
Docket No. MW-30887
96-3-92-3-738

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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

(1) The Agreement was violated when the Carrier assigned subdivision forces to perform overtime service involving track retirement work (removal of No. 3 Track) at Mile Post 5.0, Shiremanstown, Pennsylvania on May 18, 1991 (System Docket MW-2106).

(2) As a consequence of the violation referred to in Part (1) above, Claimants E. L. Keys and K. L. Lambert shall each be allowed ten (10) hours' pay at their respective time and one-half rates of pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claimants are employed as a Track Foreman and a vehicle Operator, respectively, in the Track Department and are both assigned to Retirement Gang 01. Their regular workweek is Monday through Friday with Saturday and Sunday as designated rest days.

On Saturday, May 18, 1991, the Carrier assigned Foreman Fitzgerald and Trackman Paulosky to dismantle switches on No. 3 Track at Shiremanstown, Pennsylvania. The work at issue was ten hours of overtime work. The Organization took exception to this

because it contends that the overtime should have been assigned to the Claimants who had been performing the work in question the workweek prior to May 18, 1991. Consequently, the Organization filed the instant claim contending that the Agreement was violated, particularly Rule 17. The Organization argues that the Claimants "had a contractual right to be assigned to any overtime work" on this particular assignment.

The Carrier denied the claim contending that "the work in question was not 'an approved retirement,' and therefore, did not belong to the Claimants." Furthermore, "the removal of scrap, was normally and customarily performed by sub-division personnel, as opposed to a track retirement gang." Therefore, the Carrier contends it did not violate any part of the Agreement.

This Board reviewed the record and we find that the Carrier violated the Agreement when it assigned subdivision forces to perform the overtime service involving the same track retirement work on which the Claimants had been working the previous week.

Rule 17 reads as follows:

"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 workweek or day in the order of their seniority."

The record reveals that Foreman Fitzgerald and Trackman Paulosky were assigned on May 18, 1991 to perform track retirement work on No. 3 Track at the Quaker Oats siding. The record also reveals that those individuals had not been assigned to perform any retirement work during the workweek or workday immediately prior to May 18, 1991. Both Fitzgerald and Paulosky expended ten overtime man-hours performing the work on May 18, 1991.

The record also reveals that both Claimants in this case ordinarily and customarily performed the work of retiring trackage at the very same siding at issue during the course of the previous workweek. Under the Rules, specifically Rule 17, the overtime work on Saturday was contractually reserved to the Claimants. The Carrier failed to assign that work to the Claimants and thereby violated Rule 17.

With respect to the remedy, the Carrier claims that the Agreement and previous Awards prohibit the remedy of punitive

damages. However, this Board finds that such an Award in this case would not be considered punitive damages. Numerous Awards have held that if an employee is wronged, the proper payment of damages due to the lost work opportunity is the amount of wages and benefits that the employee would have received had he been properly assigned to perform the work in question. This Board agrees with Third Division Awards 11947 and 21767 that the Claimants in this case are entitled to the overtime compensation since had they been properly called, that is the amount of pay they would have received.

In summary, it was the same work in the same place on the Saturday after the two Claimants had performed that work all week. Therefore, the Claimants were entitled to the work pursuant to Rule 17 and had they performed it as required, they would have received overtime pay.

AWARD

Claim sustained.

ORDER

This Board after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.