

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 35559  
Docket No. MW-32575  
01-3-95-3-500

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(  
(Burlington Northern Railroad Company (former  
( The Colorado and Southern Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Messrs. M.D. Van Matre and J.H. Gonzales to perform overtime service (repair broken rail) at Mile Post 206.5 west of Trinidad, Colorado on July 22, 1994 instead of calling and assigning Section Foreman M.A. Vigil and Laborer G.O. Hance (System File CS-94-12/MWD 94-11-15 AA CSR).
- (2) As a consequence of the violation referred to in Part (1) above, Section Foreman M.A. Vigil and Laborer G.O. Hance shall each be allowed two (2) hours' and forty (40) minutes' pay at their respective time and one-half rates.”

**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 were given due notice of hearing thereon.

This dispute arose at the Carrier's Trinidad, Colorado, property. There are three section crews headquartered at Trinidad, the Trinidad East Section, the Trinidad West Section and a Section Crew responsible for rail lubrication. Depending upon the scheduled work and the staffing requirements at both locations, each of these crews work both west and east of Trinidad.

M. A. Vigil and G. O. Hance (Claimants) established and hold seniority within the Track Department as Section Foreman and Laborer, respectively. At the time this issue arose, the Claimants were assigned to the West Section Crew.

In July 1994, a broken rail was discovered at Mile Post 206.5, west of Trinidad. There is no dispute that the Carrier first contacted Foreman Mondragon, the Foreman at West Trinidad, and the most senior Foreman headquartered at Trinidad. When Foreman Mondragon was unable to accept the assignment, the Carrier contacted the next most senior Foreman, VanMatre, who accepted the assignment. The Carrier subsequently contacted the most senior Trinidad West Section Laborer, who was also unavailable. The Carrier then contacted the next most senior Laborer headquartered at Trinidad, Gonzales, who likewise accepted the assignment.

On September 2, 1994, the Organization submitted a claim maintaining that Rule 21 of the Agreement was violated when the Carrier "improperly" contacted Messrs, VanMatre and Gonzales in lieu of calling the Claimants. As a result, the Organization requested that each of the Claimants be compensated a two hour and 40 minute call at their respective time and one-half rates of pay.

The Carrier denied the claim contending that:

"Since there are no territorial limits for each section and the employees from all of the sections have been used on the territory both east and west of Trinidad, Carrier determined, based on the language of Rule 21(d), that when overtime service is required by the Carrier the senior employee in each respective rank and gang should be called."

The Carrier further relied upon a handwritten letter from Roadmaster Meidinger, in which he stated that: "There is not a section on my territory that have defined territorial limits. There has not been any limit here since before 1988."

In subsequent correspondence the Organization reiterated its contention that the Carrier assigned employees to perform overtime service who were not members of the "appropriate" section crew. The Organization pointed to Third Division Award 21717, among others, in support of its position.

Rule 21 - OVERTIME AND CALLS states, in pertinent part:

"(d) Employees notified or called to perform service in advance of or following and not continuous with regular work assignment, or on rest days or one of the designated holidays will be paid a minimum of two (2) hours forty (40) minutes of service or less. If the service for which called extends beyond the minimum of two (2) hours forty (40) minutes, employees will be paid at the overtime rates as specified in subsection (a) of this rule until relieved for eight (8) consecutive hours time off duty.

Senior employees in their respective ranks and gangs will, if available, be called or used to perform overtime.”

The Organization alleged that the Claimants were assigned to the Trinidad West Section and because the broken rail was west of Trinidad, the Claimants would have been called. However, once the Carrier rightfully determined that the Trinidad West Section Foreman, Mondragon, was not available for the overtime call, the Carrier correctly contacted the next most senior Foreman, VanMatre. In that connection, the Carrier applied the same logic in calling a Laborer.

Rule 21 does not contain any language about calling employees from any particular section once it is determined that the “gang” responsible for the regular maintenance where the overtime work is required is found to be unavailable. In fact, a review of this record suggests that because the employees at Trinidad have been used as needed on the territory, there is no one “gang” assigned to any particular territory exclusively.

Finally, in these circumstances, the Organization’s reliance upon Award 21717 is misplaced. In that case, the claim was sustained when the Board found that the Carrier made a predetermined attempt to deprive certain employees of an overtime opportunity based upon “economic judgement.”

Based upon all of the foregoing, this claim is denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of July, 2001.