

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37478
Docket No. MW-36352
05-3-00-3-547**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Section Foreman G. L. Purkey and Sectionman R. E. Wahl to perform overtime service (load rail) at Borah, Idaho on May 23, 1999 and instead assigned said overtime to Extra Gang employe R. I. Anderson and junior Sectionman C. R. Reynolds (System File J-9935-61/1200388).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. L. Purkey and R. E. Wahl shall now each be compensated for eight (8) 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 were given due notice of hearing thereon.

This dispute involves an overtime assignment loading rail on Sunday, May 23, 1999 at Borah, Idaho. The Organization contends that Borah is located on the Claimants' assigned territory and that the Claimants normally load rail on their assigned shift. It is the Organization's position that the Carrier should have given preference to the Claimants to work the overtime in question rather than to the junior employees utilized. In support thereof, the Organization cites Rule 26(h) which provides:

"WORK ON UNASSIGNED DAYS. Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

In denying the claim, the Carrier included the statement from the Manager Track Maintenance insisting that the Claimants were asked to work the overtime but they declined. Because they had informed the Carrier that they would be unavailable, the work was assigned to junior employees who accepted the work opportunity.

In response, Claimant Purkey provided a statement which he indicated was also submitted on behalf of Claimant Wahl. The statement attests that the supervisor "did ask, we all told him we had plans but to let us know if he was to load rail on Sunday." Claimant Wahl did not submit a separate statement regarding his availability on the claim date.

Given this state of the record, it is apparent that there is an irreconcilable dispute as to the facts. Because the burden rests with the Organization to provide sufficient proof to support its contentions, the conflict in the evidence requires a finding that the Organization's burden has not been met. Therefore, the claim must be denied.

Form 1
Page 3

Award No. 37478
Docket No. MW-36352
05-3-00-3-547

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 19th day of April 2005.