

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38143
Docket No. MW-36842
07-3-01-3-415

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 assign Foreman B. Hendershot to perform Maintenance of Way flagging work at Mile Post 117.5 on April 6, 2000 and instead assigned junior Foreman C. Hawley (System File 8WJ-7302T/1238743 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Hendershot shall now be compensated for nine (9) hours' pay at the respective time and one-half rate 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.

The material facts that led to this claim are not in dispute. On Thursday, April 9, 2000, the Carrier canvassed Track Subdepartment employees soliciting a volunteer to work overtime on Sunday, April 9, 2000, as Flagging Foreman for a contractor performing work on a grade crossing at Mile Post 117.5 on the Sheboygan section territory. Both members of the Sheboygan section gang declined the overtime.

The Claimant, Foreman B. Hendershot, volunteered for the overtime. He was the senior Foreman who desired to work the overtime. However, Foreman C. Hawley, acting in his capacity as the BMW Local Lodge President, informed management that he [Foreman Hawley] was entitled to the overtime because as the regular Foreman he had preference to overtime over Foreman Hendershot, the senior extra gang Foreman. Relying on the Local Lodge President, the Carrier assigned Foreman Hawley the relief day overtime. He earned nine hours of overtime.

On June 6, 2000, two months after the overtime was worked, BMW Vice General Chairman Jordie filed a claim on behalf of Foreman Hendershot claiming that his seniority rights were violated when he was not given the overtime on his relief day.

The Board agrees with the Carrier that the Organization is estopped from presenting a claim on behalf of Foreman Hendershot. Relying on the representation of the Local Lodge President that he had contractual preference to the April 9, 2000 overtime, the Carrier assigned him [Local Lodge President] the overtime.

Whether or not the Local Lodge President had the actual authority to interpret the Agreement is beside the point because he held himself out as having the authority to interpret the Agreement. Therefore, local management relied in good faith on his apparent authority. It had no reason to question his authority because on the local level, the Lodge President represents employees. Local management was not obligated to contact the General Chairman or UP Labor Relations to confirm the Local Lodge President's interpretation of the Agreement.

Form 1
Page 3

Award No. 38143
Docket No. MW-36842
07-3-01-3-415

Based on all the foregoing, the Organization is estopped from presenting this claim and it is denied as a result.

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 23rd day of April 2007.