

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40669
Docket No. MW-39855
10-3-NRAB-00003-060659
(06-3-659)**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call Mr. J. Miller for overtime service (derailment clean up) at the La Crosse Yards on July 24, 2004 and instead called junior employees M. Kjos and E. Smothers [System File C-04-O020-41/10-04-0322(MW) BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Miller shall now be compensated for seven and one-half (7.5) hours at his 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.

On August 28, 2004, the Organization filed a claim alleging that "Rules 1, 2, 24, 29, 30 and not limited thereto were violated" when two employees junior to the Claimant were called to help clean up a derailment at La Crosse Yards.

On November 1, 2004, the Carrier denied the claim stating the Roadmaster contacted the Claimant at his residence with no result and then proceeded to call others. The Organization filed an appeal on December 10, 2004, noting there was no proof of an attempt to contact the Claimant.

On January 26, 2005, the Carrier denied the appeal stating the Organization submitted no evidence to support its claim and asserting the Carrier was not required to make several attempts to contact the employee to help with the derailment which was an "emergency" situation.

By letter dated March 21, 2006, the Organization confirmed the conference held on January 25, 2006. It stated that the Carrier made one attempt to contact the Claimant and that was not a reasonable effort during the alleged emergency.

There is no dispute that the derailment was blocking the yard as well as the main line. This was an unforeseen combination of circumstances which called for immediate action to repair the tracks. When an emergency exists, the Carrier is afforded wide latitude to respond to it.

The Carrier's action in responding to this emergency complied with the Agreement. That is, the Carrier engaged in reasonable efforts to contact the proper personnel to respond to the emergency. Those available and responding to the contact handled the emergency situation. The Claimant's statement is insufficient evidence to support his assertion that no one contacted him, but he was available. The Claimant was not at his residence and, thus, was not available.

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Alternatively, the claim seeks compensation for Trackman work performed in the Track Sub-department. The Claimant was assigned as a Grinder Operator, which is not in the Track Sub-department. Because the Carrier is required to contact the proper employees for overtime from the proper sub-departments, the Claimant would not have been contacted because he is not in the Track Sub-department.

In view of the foregoing, the Board finds that Parts (1) and (2) of the claim are not established. Accordingly, the 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 1st day of November 2010.