

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40987
Docket No. MW-41232
11-3-NRAB-00003-100040**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(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 Truck Operator J. Williams and Machine Operator G. Crossley to perform overtime track repair service in Davidson Yard at Fort Worth, Texas, on May 18, 2008 and instead called and assigned a junior truck operator and a junior machine operator (System File MW-08-91/1507483 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Williams and G. Crossley shall now each be compensated for eight (8) hours 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.

According to the Organization, the Claimants — a Truck Operator and a Machine Operator — are members of Gang 2181 on the Fort Worth Service Unit headquartered at Davidson Yard with scheduled work days of Monday through Friday. On Sunday, May 18, 2008, an overtime opportunity arose and the Carrier assigned two employees from Gang 2187 to perform the work. The employees who performed the disputed work were junior to the Claimants, and used the truck utilized by the Claimants' gang.

According to the Carrier and Manager of Track Maintenance D. E. Mitchell, the track maintenance performed on that date was at the Hump Lead and work performed at that location is regularly assigned to members of Gang 2187. However, according to the Carrier, because the truck ordinarily utilized by Gang 2187 was in the shop on the date in dispute, the Carrier opted to use the truck utilized by the Claimants' gang.

Rule 25(j) provides:

“Where work is required by the Carrier to be performed on a day which is not 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.”

While the truck utilized by the Carrier may have been the one used by the Claimants during the week on Gang 2181, the overtime opportunity arose in the location covered by members of Gang 2187. In this case, the location of the work dictates the assignment of the overtime. Here, because the overtime opportunity arose in the area covered by Gang 2187, the two employees on that gang — although junior to the Claimants — were “. . . the regular employee[s]” under Rule 25(j) and thus entitled to the overtime opportunity. The fact that Gang 2187's truck was in

the shop necessitating the Carrier to utilize the truck from the Claimants' Gang 2181 cannot change the result.

The Organization also contends that the Foreman on Gang 2181 was assigned to the overtime work. There is no claim in this matter for improper assignment of a Foreman. The Claimants are a Truck Operator and a Machine Operator and the claim specifically states that the Carrier “. . . instead called and assigned a junior truck operator and a junior machine operator.”

Insofar as the Organization asserts that the location of the work was under the jurisdiction of the Claimants' Gang 2181 and, therefore, the Claimants were entitled to perform the work (see the Organization's letter of October 21, 2008 — “[t]he Carrier has made an assumption that this was Gang 2187 assigned territory only . . . [t]he Claimant[s] are also assigned to that territory”) that assertion results in an irreconcilable factual dispute because of the Carrier's assertion that Gang 2187 ordinarily performed work at that location and not the Claimants' Gang 2181. Because the burden is on the Organization, that factual dispute requires the Board to find that the claim lacks merit.

The claim shall be 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 20th day of July 2011.