

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40989
Docket No. MW-41264
11-3-NRAB-00003-100113**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation 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 Mr. D. Bohl to perform overtime service on October 25, 2008 and instead called and assigned junior employee S. Johnson (System File R-0831C-306/1512327 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Bohl shall now be compensated for nine (9) hours at the applicable overtime 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.

At the time this dispute arose, the Claimant was assigned as a Common Machine Operator on Gang No. 2953 at Mason City, Iowa, with primary responsibilities of operating a rubber tired end loader for that gang. S. R. Johnson was also a Common Machine Operator, but was assigned on Gang No. 2985, also out of Mason City, with primary responsibilities of operating as a Boom Truck Driver. Both the Claimant and Johnson had Monday through Friday schedules. The Claimant was senior to Johnson, both in service and Common Machine Operator seniority.

This dispute arose over an overtime assignment on Saturday, October 25, 2008. On that day, Manager of Track Maintenance O. Steil utilized junior employee Johnson to drive a truck to follow along with an EC-5 test car and help move vehicles on the Albert Lea and Fairmont Subdivisions.

According to the Carrier's December 29, 2008 letter, ". . . Johnson has been the regularly assigned employee that is utilized for truck driving duties on the Albert Lea and Fairmont Subdivisions." The Claimant states that he also has been called to operate various trucks and that the truck used on October 25, 2008, was assigned to the Mason City section.

The B&B and Track Sub-departments list separate classifications for "Truck Drivers" and "Machine Operators" in Rule 2.

Further, Rule 31- CALLS provides:

- "A. Employees called to perform work not continuous with regular work period shall be allowed a minimum of two hours and forty minutes at rate and one-half, and if held on duty in excess of two hours and forty minutes shall be compensated on a minute basis for all time worked. When necessary to call employees under this rule, the senior available employees in the gang shall be called."

The equipment used on the date in dispute was a truck utilized to follow an EC-5 test car and Johnson helped move vehicles on the Albert Lea and Fairmont Subdivisions. Both the Claimant and Johnson held Common Machine Operator seniority, but the Claimant was senior to Johnson in both classification and service. And the record shows that both the Claimant and Johnson have driven trucks.

The dispute is resolved on the basis of the clear language of Rule 31 — “[w]hen necessary to call employees under this rule, the senior available employees in the gang shall be called.” [Emphasis added] While it is understandable that the Claimant would see an entitlement to a call for the overtime work based on his seniority, Rule 31 gives the Claimant that entitlement for the call only for overtime work “. . . in the gang. . . .” In its Submission, the Carrier argues that “. . . the work involved ‘shuttling vehicles’ in conjunction with the EC-5 Test Car and had nothing to do with Gang No. 2953, which was the gang the Claimant was assigned to.” That assertion is supported by the record and has not been factually refuted in this record. Without more of a showing that the work performed by Johnson on October 25, 2008, was that of the Claimant’s gang, when the Claimant and Johnson have both operated trucks, the Claimant cannot assert a superior right over Johnson to receive the overtime call for this particular work. The relevant portion of Rule 31 does not provide that right to the Claimant because there has not been a showing that the work was “. . . in the gang. . . .”

The claim lacks merit and, therefore, must 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.