

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41502
Docket No. MW-41439
13-3-NRAB-00003-100346**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 Welding Gang 6762 employees R. Howard and P. Broyles to perform overtime track repair service in the vicinity of Mile Post 230 (within Gang 6762’s regularly assigned territory) on the Ayers Subdivision on June 12, 2009 and instead called Welding Gang 6754 employees who were not regularly assigned to territory on the Ayer Subdivision (System File D-0935U-204/1521819).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Howard and P. Broyles shall now each be compensated for five and one-half (5.5) 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.

The record evidence establishes that on June 12, 2009, the Carrier did not call Welding Gang 6762 employees and instead called Welding Gang 6754 employees to perform overtime track repair on the Ayer Subdivision where Welding Gang 6762 was regularly assigned.

The Organization claims a violation of the Agreement. Conversely, the Carrier asserted that an emergency existed due to thermal misalignment of track. The track buckling halted traffic and the Carrier responded by calling the closest welding gang to repair the track.

The Board reviewed the record evidence, as well as the parties' Submissions. The Carrier defends its decision to use Welders from Gang 6754 on Gang 6762's territory citing an emergency, which allowed it to depart from following the Agreement.

An "emergency" exists when an unforeseen combination of circumstances call for immediate action. See Third Division Award 20527. The Carrier has leeway in assignments during an emergency. In the instant matter, the Carrier Manager's statements in evidence establish that an emergency existed due to the track being thermally misaligned. The record evidence also establishes that the Carrier called the closest employee – Welder Garcia – who was an hour from the scene. The Claimants were more than two hours away. Because we find that the Carrier's actions to address the emergency were justified, the claim must be denied.

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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 February 2013.