

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41506
Docket No. MW-41620
13-3-NRAB-00003-110262**

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 Mr. D. Swane to perform overtime protection services for a contractor operating a hy-tracker machine on the Gila Subdivision between Mile Posts 885 and 887 on January 15, 2012 and between Mile Posts 888 and 890 on January 24, 2010 and instead called and assigned junior employee G. Jameson (System File R-1035U-303/1532890).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Swane shall now be compensated for twenty-four (24) 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.

The Organization contends that the Claimant was the regularly assigned employee working compressed halves and should have been performing the protection work during the off days of January 15 and 25, 2010. The Carrier counters that track protection can be provided by any employee and that junior employee G. Jameson was providing track protection continuous with his regular assignment.

The Board reviewed the record evidence. The burden is on the Organization to establish a violation of the Agreement. The Organization claims a violation of Rule 20(h) when the Carrier utilized Semi-Truck Operator Jameson to perform flagging on the two days in question.

Rule 20(h) - Work on Unassigned Day, provides that the work should go to employees with less than 40 hours during that workweek or "in all other cases by the regular employee."

The burden is on the Organization to prove that the Claimant was the regular employee who should have been called for the disputed work. The Organization failed to rebut the Carrier's assertion that Jameson was the regular employee for the work at issue here. Accordingly, the claim must be denied.

AWARD

Claim denied.

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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.