

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41581
Docket No. MW-41437
13-3-NRAB-00003-100324**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Mr. R. Beckhorn (regularly assigned to perform flagging) to perform overtime flagging service on April 10, 2009 and instead called and assigned Track Inspector R. Cruz (Carrier's File 1520144 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Beckhorn shall now be compensated for eight (8) 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 filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to assign the Claimant to perform overtime service on April 10, 2009, and instead assigned a Track Inspector to perform the work.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier violated the Agreement by failing to call the Claimant to perform overtime work of a type he had been regularly assigned to perform for the same contractors and at the same location (2) the Claimant was entitled to preference in connection with this overtime work (3) there is no merit to the Carrier's defense, and (4) the requested remedy is appropriate. The Carrier counters that the claim should be denied in its entirety because (1) no violation occurred in that the Claimant was offered preference for overtime but did not return management's phone call, and (2) the Organization failed to meet its burden of proof.

The Board reviewed the record and finds that the Organization met its burden to prove that the Agreement was violated when the Carrier failed to assign the Claimant to perform overtime flagging service on April 10, 2009, and instead called and assigned a Track Inspector to perform that work.

The record reveals that the Claimant was informed on the day before Good Friday (April 9, 2009) that there would be no need for flagging services the following day. Apparently, things changed and the Carrier called the Claimant in an effort to notify him of the overtime work for Good Friday. The Claimant went to the job site and Track Inspector Cruz told him that he had been sent by C. Gillis to provide the flag protection for the contractors. Track Inspector Cruz instructed the Claimant to return home. The Claimant attempted to call Gillis on Friday, April 10, 2009, at 7:39 A.M. The Claimant believed that Gillis was the person in charge of the Flagman position on that date. The Claimant was unable to reach Gillis.

Consequently, the Claimant did present himself on the date in question to perform the required flagging duties. The Claimant was not allowed to perform those duties even though he was the person who had been performing them earlier in the week. It was the Carrier's error that took place on the previous day which led to the inability of the Claimant to perform the work at issue. Gillis was the one

who told the Claimant that no one would be performing flag duties on April 10, 2009, and subsequently a Track Inspector performed the work instead of the Claimant.

For all the above reasons, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of March 2013.