

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41583  
Docket No. MW-41567  
13-3-NRAB-00003-110178**

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

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employees Division -**  
**( IBT Rail Conference**  
**(Union Pacific Railroad Company (former Chicago**  
**( and North Western Transportation Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it failed to call B&B Gang 3076 Foreman E. Ray for overtime service in connection with repairs to the Clinton Swing Bridge at Mile Post 136.65 on October 27, 2009 and instead called junior employee J. Nordoff (System File S-0931C-354/1529204 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Ray shall now be compensated for three (3) hours and forty-five (45) minutes at his 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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to call the Claimant for overtime service on October 27, 2009, and instead called a junior employee to perform the work.

The Organization contends that the claim should be sustained in its entirety because (1) the date in question was a regularly scheduled workday for the Claimant so he was available to perform the overtime work at issue (2) the Claimant was available during the hours both before and after his scheduled shift, and (3) the Claimant was the senior member of the gang involved and the regular employee to perform such work. The Carrier counters that the claim should be denied in its entirety because (1) the Claimant was not available for the alleged overtime until he returned to his normal assignment from vacation which was after the work in question was performed (2) the Organization failed to prove that the Claimant was entitled to this overtime work, and (3) nothing in the record establishes that the Carrier was obligated to call the Claimant for the alleged overtime work.

The Board carefully reviewed the record and finds that the Organization failed to meet its burden to prove that the Carrier violated the Agreement when it failed to call the Claimant for overtime service on October 27, 2009, and instead called a junior employee.

The record reveals that the Claimant was observing his vacation and did not return until his starting time, which was 8:00 A.M., on October 27, 2009. The day at issue was the Claimant's first day back. The overtime that occurred was before the Claimant's start time. The Carrier properly contends that the Claimant was still on vacation at the time of the overtime.

In Third Division Award 31790, the Board stated:

"The Board does not agree with the Claimant. He was on vacation on all dates involved in this claim, but overtime was worked by a junior employee. This Board has consistently held that employees who are on vacation are unavailable to perform overtime work."

See also Third Division Award 29092.

The Board has consistently held that a person who is observing vacation is unavailable to perform overtime work until he returns to his regular assignment. In our decision in Award 39146 we held:

“Preference for overtime assignments is a major benefit of seniority. However, numerous Third Division awards establish that an employee on vacation or personal leave is not considered available for overtime until he returns to his regular assignment, and a Carrier is not required to call employees on vacation or personal leave for overtime work.”

See Third Division Awards 23198, 29092, 29261 and 31790.

For all of the above reasons, this claim 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 18th day of March 2013.