

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41584
Docket No. MW-41594
13-3-NRAB-00003-110232**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 Agreement was violated when the Carrier failed to call and assign Mr. J. Hackenmiller to perform trackman work in the area of Cedar Rapids, Iowa on January 8, 9 and 10, 2010 and instead assigned junior employee C. Benson (System File R-1014C-306/1531235 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hackenmiller shall now be compensated at the applicable rate of pay for a total of twenty-four (24) hours of straight time and twelve (12) hours of overtime.”**

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 and assign the Claimant to perform certain Trackman work on January 8, 9, and 10, 2010, and instead assigned a junior employee to perform the work.

The Organization contends that the claim should be sustained in its entirety because the Claimant has superior seniority over the employee who was assigned to the work while they both were furloughed, because (1) the Carrier failed to prove its affirmative defense that it tried to contact the Claimant for the work, and (2) the Carrier's defense that the Claimant was unavailable because he had been assigned to another bid is both completely unsupported by the evidence and utterly inconsistent with its first defense. The Carrier counters that the claim should be denied in its entirety because (1) the Claimant failed to answer management's attempt to offer the work (2) the Claimant was not furloughed at the time because he had been awarded a position effective as of the first date of the claim, and (3) the Organization has not met its burden of proof.

The Board carefully reviewed the record and finds that the Organization met its burden to prove that the Carrier violated the Agreement when it failed to call and assign the Claimant to perform Trackman work on January 8, 9, and 10, 2010, and instead assigned a junior employee to do the work.

It is clear from the record evidence that the Claimant was the senior furloughed employee at the time that the work at issue became available. The record reveals that the Claimant had been awarded a new job on January 8, 2010, but the start date of that job was not until Monday, January 11, 2010. Consequently, he was available.

The Carrier contends that the Claimant was called on his cell phone, but the Claimant denies that any call was ever received. The Carrier failed to produce any documentary evidence to support its assertion that the Claimant was indeed called on the date in question. Moreover, there is no showing that the Claimant was called on January 9 or 10 to perform the work at issue.

Consequently, even though the Claimant was awarded a bid on January 8, 2010, he was still on furlough until he could begin that job on January 11, 2010. The Carrier had an obligation to offer the involved snow removal work to the Claimant before it offered it to a junior employee. The Carrier simply failed to come forward with sufficient evidence to prove that it made that offer to the Claimant. Therefore, 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.