

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41586
Docket No. MW-41623
13-3-NRAB-00003-110270**

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. Coolican to perform overtime service on territory covered by Mason City, Iowa Section Gang 2958 on February 8, 9, 10, 11, and 12, 2010 and instead called and assigned junior employes K. Kockler and C. Peterson (System File R-1031C-305/1532894 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Coolican shall now be compensated for forty (40) hours at his applicable 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 to perform overtime service on February 8, 9, 10, 11, and 12, 2009, and instead called and assigned a junior employee to perform the work.

The Organization contends that the claim should be sustained in its entirety because (1) the Claimant was the regular assigned employee to perform the overtime service in question (2) the Claimant therefore was entitled to the work in question (3) there is no merit or evidentiary support for the Carrier's defense, and (4) the Claimant is entitled to the requested remedy. The Carrier counters that the claim should be denied in its entirety because (1) the Carrier acted in harmony with the Agreement's requirements in light of emergency snow conditions (2) the Carrier has broader latitude to manage its forces during such unforeseen emergency conditions, and (3) the Organization failed to meet its burden of proof.

The Board carefully reviewed the record and concludes that there is sufficient evidence in the record to support the finding that the Carrier violated the Agreement when it failed to call the Claimant to perform overtime service on February 8, 9, 10, 11, and 12, and instead called and assigned junior employees to perform the overtime work in question.

The record reveals that the Claimant had more seniority than the employees who were called in by the Carrier to perform the overnight overtime service on the dates in question. The Carrier first denied that the junior employees were called in to work. Subsequently, when the Organization came forward with more evidence, the Carrier took the position that there was an "emergency" and it had a right to call in the junior employees to perform the work. There is no question that there was an emergency. There was a heavy snowfall between 14 and 24 inches. The Carrier needed the work performed at night. However, the emergency situation was no excuse for the Carrier not to offer the overtime opportunity to the Claimant before it offered it to the junior employees. The Carrier now admits that the junior employees did perform the work and takes the position that they were on furlough, whereas the Claimant had been working his regular job during the day. That may

be the case, but it is clear that the Claimant still had the right to be offered the overtime work prior to such work being assigned to junior employees.

Because the Carrier violated the Agreement when it failed to call the Claimant to perform overtime service on the dates in question, 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.