

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41587
Docket No. MW-41625
13-3-NRAB-00003-110272**

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**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and regularly assigned employees B. Louis and T. Hiltibrand to overtime service of repairing broken rail in the vicinity of Mile Post 53 on the Kansas Subdivision on February 6, 2010 and instead called and assigned Messrs. A. Fox and T. Akin (System File J-1035U-253/1532935).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants B. Louis and T. Hiltibrand shall now each be compensated for nine (9) hours at their respective time and one-half rates 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 Claimants, alleging that the Carrier violated the parties' Agreement when it failed to call the Claimants to perform overtime service on February 6, 2010, and instead assigned the work to two employees who did not hold regular assignments.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier violated the Agreement by failing to call and assign the overtime work at issue to the Claimants as the regularly assigned employees to perform this type of work (2) the Carrier's failure to call and assign the Claimants denied them their right to perform overtime duties and enjoy the monetary benefits thereof (3) the Carrier's defenses are unsupported and without merit, and (4) the requested remedy is proper. The Carrier counters that the claim should be denied in its entirety because (1) the work in question was correctly assigned and worked in accordance with Rule 26(h) (2) the Claimants were not the proper and qualified regular employees for the grieved work (3) the Carrier has the fundamental right to manage its work force, and (4) the Organization failed to meet its greater burden of proof in this jurisdiction of work dispute.

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 did not assign the Claimants to repair a broken rail on an overtime basis.

The record reveals that the work at issue required welding. The Claimants were not Welders, but were a Track Foreman and a Truck Driver. The broken rail at issue was repaired by cutting out the defect and installing one field weld. The Carrier needed Welders to perform the work.

The Organization failed to prove that the Claimants were the appropriate personnel to be called under the Agreement for this type of work. The Claimants are not regularly assigned Welders.

Because the Organization failed to meet its burden of proof, the 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.