

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41592
Docket No. MW-41767
13-3-NRAB-00003-110391**

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 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 offer and assign Mr. C. Gendreau to overtime service as a track patrolman from Mile Posts 232.0 to 281 on the Canyon Sub on April 12, 2010 and continuing into April 13, 2010 and instead assigned junior employee A. Morton (System File L-1028S-453/1538205 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Gendreau shall now be paid for twelve and one-half (12.5) hours at his respective 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 during the night of April 12, 2010, and instead assigned a junior employee 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 make any attempt to offer and assign the Claimant to perform the subject pre-planned overtime work (2) there is no merit or evidentiary support for the Carrier's defense, and (3) the Claimant is entitled to the requested remedy. The Carrier counters that the claim should be denied in its entirety because (1) the Claimant implicitly rejected the subject overtime work when he failed to answer his phone and accept the offered overtime work (2) the Organization's unsupported allegation does not fulfill its burden of proving that the Claimant was not offered the work, and (3) the Organization failed to provide any valid evidence to support its claim for the relief sought.

The Board 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 and assign the Claimant to overtime service as a Track Patrolman on April 12, and continuing to April 13, 2010.

The record reveals that the Carrier Manager attempted to contact the Claimant for the overtime opportunity on April 11 and was unsuccessful. On April 12, the Claimant walked in to work his normal day assignment rather than work the night shift. The on-property record contains a written statement from Manager Dickinson which states the following:

**"Date: 06/08/2010
To: Shawn M. North
Cc:**

Subject: Response to Claim # M10-SPW064

A storm started at approx 1330 on April 11th. Since there were no assigned escorts at this time, I called people out on availability by seniority. I could not get Corey Gendreu for the night shift on the 11th and was able to get Mike Copsey, Scott Burns, and Alan Morton. The following morning Corey returned to work at 0700 Monday the 12th, and volunteered to work the day shift and received 9 hours pay that day and 12 hours the next day. He made no mention of preferring the night shift for the day shift. When the storm starts you have to get who is available by seniority. If he wished to shift to the night shift he could have said something on morning of the 12th of April. Instead he worked the day shift for the duration of the storm.”

Because the Claimant had been given the opportunity to perform the work in question and elected to work the daytime hours and received nine hours of pay for April 12 and 12 hours for the next day, the Board cannot find that the Carrier violated the Agreement. Therefore, 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.