

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41810
Docket No. MW-42173
14-3-NRAB-00003-130131**

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

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway 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. R. Randall to perform overtime service in connection with rail change out work on the Madison Branch on December 26, 2011 (Carrier’s File MW-12-07).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Randall shall now be compensated for eight (8) hours at his respective time and one-half 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.

This claim protests the Carrier's failure to call the Claimant, a Foreman in the Track Sub-Department who regularly inspects and maintains track in the territory involved, for scheduled overtime on December 26, 2011 in accordance with the requirements of Article 10.4 (b). There is no dispute that the Claimant was entitled to be called for the overtime assignment in dispute.

The Organization argues that once it is asserted that an overtime call was made, the burden shifts to the Carrier to establish such assertion by sufficient documentary evidence. It asserts that a statement from Supervisor Lawrence to the effect that he made such call and the Claimant did not answer, without providing supporting documentation in its possession, is insufficient to meet such burden, citing Third Division Awards 18447, 28724, and 36932.

Conversely, the Carrier contends that the Organization failed to sustain its burden to prove a violation of the Agreement. The Carrier notes that it provided a written statement supporting its position that the Claimant was, in fact, called by the Supervisor for this assignment, but failed to respond to the call. The Carrier contends that the Organization's failure to refute this statement negates its assertion that more proof was needed.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving that the Carrier violated Article 10.4(b) by its assignment of overtime on December 26, 2011. The underlying basis for the claim is the Organization's assertion that the Claimant was not called for the overtime assignment in question. The Carrier presented proof to the contrary and the Organization failed to rebut such proof. It was not incumbent upon the Carrier to provide additional documentation under these circumstances. Accordingly, the claim must be denied.

AWARD

Claim denied.

Form 1
Page 3

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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 27th day of February 2014.