

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 39914  
Docket No. MW-38462  
09-3-NRAB-00003-040414  
(04-3-414)**

**The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(BNSF Railway Company (formerly The Atchison,**  
**( Topeka and SantaFe Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned Mr. B. Andras to perform overtime bridge tender service at Mermentau Bridge at Mile Post 180.26 at Mermentau, Louisiana beginning on June 18, 2003 and continuing through June 22, 2003 instead of regularly assigned Mermentau Bridge Tender G. Fontenette [System File JFSF-03-09/15-03-0014 (MW) ATS].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Fontenette shall now be compensated for thirty-two (32) hours pay 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.

The claim involves the assignment of overtime Bridge Tender work at the Mermentau Bridge. The Organization maintains that the Carrier violated the Agreement when it assigned overtime work to an employee who was not regularly assigned to the Mermentau Bridge. The Carrier counters that it assigned the work to senior employee B. Andras.

It is undisputed that Andras, who was working relief at that location during the dates at issue in the claim was senior to the Claimant, who was also assigned to the Mermentau Bridge.

**Rule 33(1) Preference to Overtime Work.**

“Except when employes are utilized as provided in Rule 33(f), employes assigned to sections, work districts, specific area and/or locations shall be given preference in relative seniority order among other employes of the gang, work district or location to overtime work to be performed within such section, district area or location.”

The Board carefully reviewed the record evidence. The employees at issue were not assigned to a gang or section; they were assigned to a location – the Mermentau Bridge. Andras was working at that location and had more seniority than the Claimant. Andras was assigned the overtime pursuant to Rule 33(I). The burden is on the Organization to establish a violation of the Agreement. Because the Organization failed to meet its burden of proof, the claim is denied.

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**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 31st day of August 2009.**