

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40098
Docket No. MW-40329
09-3-NRAB-00003-080096

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud 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 assign Common Machine Operator R. Mathews to overtime service (operate skid loader with sweeper attachment) to sweep the parking lots in the Short Line Yard in Des Moines, Iowa on September 2, 2006 and instead assigned junior employee E. Banks (System File 2RM-9763T/1460971 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Mathews shall now be compensated for six (6) 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.

The facts are not in dispute. This claim involves a pre-planned rest day overtime assignment on Saturday, September 2, 2006 to sweep the parking lots in the Short Line Yard in Des Moines, Iowa. The Carrier assigned the overtime to E. G. Banks, who holds seniority in the Maintenance of Way and Structures Department from 2005. Banks, who is a Machine Operator headquartered in Des Moines, operates a Speed Swing in Gang 2923.

Claimant R. Matthews holds seniority in the Maintenance of Way and Structures Department dating back to 1978. He is in Seniority District T-2. He was headquartered out of Nevada, Iowa, in the vicinity of Des Moines to work as a Truck Driver/Machine Operator on Gang 2922. The Claimant noted that Nevada, Iowa, was the show up point on the first day; he was assigned to the Short Line Yard during most of the summer of 2006. One month prior to the assignment at issue, the Claimant was assigned to and used the very same equipment used by Banks, i.e., CTL No. 176113 Cat Tractor End Loader to sweep debris. Furthermore, this equipment was allocated to the Claimant's Gang, 2922.

This dispute arises out of the application of Rules 23 L and 31 A. The overtime work assignment at issue was pre-scheduled on an unassigned day. Sweeping the parking lots of the Short Line Yard was not part of any other assignment. There were no available extra or unassigned employees with less than 40-hours for the workweek to perform this work. Under Rule 23, the work should be assigned to "... the regular employee."

The question to be determined concerns who is the "regular employee." According to the Carrier, Banks was assigned because he is headquartered out of Des Moines and normally performs this work, which is located in his regularly assigned work area. Conversely, Matthews is assigned to a mobile gang which happens to be in the area. The Carrier contends that the determining factor is not seniority, but who regularly performs the work. The Organization failed to establish a Rule violation. The Carrier asks that this claim be denied.

The Organization argues that Claimant Matthews is the regular employee who previously performed the work. Because the involved work assignment was not continuous with regular work Rule 31 applies and the senior available employee, i.e., the Claimant should have been called.

A close review of the on-property record reveals that neither the Claimant nor Banks operated the equipment during the prior week. Neither one is the regular employee within the meaning of Rule 23. The work of sweeping the parking lots in the Short Line Yards was not continuous to a regular work period. The Rule requires that the senior employee in the gang be called. The Rule does not mandate which Gang should be called, 2922 or 2923. The Carrier called the Banks, who is the senior employee in Gang 2923. The Board concludes that the Organization failed to prove that the Carrier violated either Rule 23 or Rule 31 when it assigned this overtime to Banks.

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 19th day of November 2009.