

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40326
Docket No. MW-40524
10-3-NRAB-00003-080356**

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**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier sent Mr. L. Martellaro home from performing overtime service of cleaning switches at Denver North Yard on December 22, 2006 and allowed junior employees F. Casados and R. Long to continue performing said overtime service (System File D-07-04/1470629).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Martellaro shall now be compensated for nine and one-half (9.5) hours at his respective double time rate of pay and for five (5) hours at his respective straight time 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.

On December 22, 2006 as a result of a snowstorm that hit the Denver area, the Carrier assigned its forces on a 24-hour basis. It did so to keep the yard switches in the Denver North Yard clear of ice and snow and operational. The Carrier scheduled its forces to work in 12 hour segments, starting at 12:30 A.M. to permit employees to work and obtain necessary rest.

Claimant L. Martellaro, as well as junior employees F. Casados and R. Long, began working on December 22, at the same time. The Carrier assigned the two junior employees to continue working the first 12-hour segment from 12:30 A.M. while it sent Martellaro home. In essence what occurred, the Carrier sent the more senior employee home first. He returned to work a different 12-hour segment than junior employees Casados and Long. On the property, the Carrier asserted, without contradiction from the Organization, that Martellaro was not deprived of overtime and he made the same as others mentioned in the claim.

The Carrier asserted without contradiction that it schedules its forces to meet 24-hour operational demands in 12-hour segments so that employees may work and rest to meet the Carrier's operational needs. This case is similar to Third Division Award 33896, where the Board found no violation of employee seniority in the Carrier's scheduling of senior employees in work segments of 16 hours on and eight hours off for rest when senior employees worked more double time and other overtime than junior employees.

Here, there is no evidence to establish that the Claimant lost any overtime opportunities or pay. The Carrier sent the Claimant, the senior employee home first. There is no showing that the Carrier attempted to violate his seniority rights. It did not result in any loss to the Claimant. The Organization bears the burden of proof (Third Division Award 31930). The Board concludes that the Organization failed to meet its burden of proof to establish a violation of any Rule, and particularly, it failed to establish that the Claimant suffered any loss as a result of the Carrier's actions.

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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 1st day of March 2010.