

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40395
Docket No. MW-40634
10-3-NRAB-00003-080405**

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 (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 call Foreman S. McQuitty for overtime service (snow clearing work) at Highland Park, Illinois on January 22, 2007 and instead called and assigned junior Foreman R. Modrow (System File B-0731C-101/1471777 CNW).**
- (2) The Agreement was violated when the Carrier failed to call Foreman S. McQuitty for overtime service (snow removal, salting and preparation work) at Highland Park, Illinois on February 7 and 26, 2007 and instead called and assigned junior Foreman R. Modrow (System File B-0731C-102/1471778).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant S. McQuitty shall now be compensated for two (2) hours and forty (40) minutes at his respective time and one-half rate of pay.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant S. McQuitty shall now be compensated for a total of**

five (5) hours and twenty (20) minutes 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.

Three incidents gave rise to two claims, one covering the events of Monday, January 22, and the other addresses incidents on Wednesday, February 6, and Monday, February 27, 2007. The parties processed these claims separately on the property. Other than the dates, the salient facts underlying the claims are the same. The claims were consolidated for presentation to the Board by agreement of the parties.

Claimant S. McQuitty established Foreman seniority on November 18, 1994. R. Modrow established Foreman seniority on June 9, 1995. Both were headquartered at Highland Park, Illinois, when these incidents occurred. The Claimant was assigned to Gang 3720; Modrow was assigned to Gang 3658.

The Organization assumes that the overtime work was unassigned. If so, the Carrier should have assigned the overtime pursuant to Rules 31 and 4. The Claimant, as the most senior Foreman at the Highland Park location, should have been assigned the overtime, the Organization argues. Further, the Organization asserts that Modrow was physically located and worked apart from Gang 3658. The overtime was not continuous with Modrow's regular hours. The Organization represents that the scenario is one of an overtime call-out. It contends that the

Claimant should receive two hours and 40 minutes call-out pay in accordance with Rule 31 A.

The record developed on the property does not support the factual assumptions on which the Organization's assertions are based. The Board makes its factual findings on the basis of the un-rebutted statement placed in evidence by Carrier Management on the property:

"Multiple gangs have responsibility for the emergency snow removal at this headquarter location. Mr. McQuitty is not part of Gang 3658 which was called to perform the work. Mr. Modrow is the senior employee of that gang. All employees were notified to come in early the day in question prior to leaving work. Because of this the claimant is not entitled to a call the day in question."

There is no Organization statement in the record that conflicts or modifies the essential facts of what occurred as described in the above statement. Prior to the end of shift on the work day prior to the dates in question, the Carrier asked the members of Gang 3658 to come in one hour prior to the beginning of their regular shift to clear snow. The overtime was assigned to Modrow as the senior Foreman and member of Gang 3658. The overtime was continuous with his (and the rest of the Gang's) regular hours of work. He (and the rest of the Gang) was told to report one hour early and work into the regular hours of his shift. There is no evidence in the record that suggests that under these factual findings the Carrier violated the Agreement. The Carrier argues that the assignment it made conforms to Rule 23 L. The Board concludes the overtime was assigned.¹

The Organization argues that the Carrier should have assigned Gang 3720 to remove the snow. It refers the Board to Third Division Award 32414 for support. In that Award, the Board concluded that the Carrier should have used the Section Gang rather than the International Gang to perform track repairs. Here, Gangs

¹Even if the Board were to conclude that the overtime was unassigned and governed by Rule 31, Modrow, rather than the Claimant was the regular employee. Under Rule 31, Modrow as the regular employee would have been entitled to the overtime.

3720 and 3658 are the same type of gangs. Both are headquartered at Highland Park. The Organization could not point to any Rule which limits the Carrier's choice of selection as between Gangs 3658 and 3720 that would require the Carrier to select one over the other.

Because the Board concludes that the Organization failed to meet its burden of proof by establishing that the Carrier violated a Rule, the instant 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 25th day of March 2010.