

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40818
Docket No. MW-40824
10-3-NRAB-00003-090084**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 assigned junior Extra Gang Foreman F. Casados to perform rest day overtime service of inspecting track from Mile Posts 00.0 to 3.0 on the Beltline, Mile Posts 00.0 to 5.0 south and Mile Posts 00.0 to 17.3 on the Main Line west, in the vicinity of Denver, Colorado, on September 8, 2007 instead of senior Extra Gang Foreman L. Martellaro (System File D-07-50/1486080).**
- (2) The Agreement was violated when the Carrier assigned junior Extra Gang Foreman F. Casados to perform rest day overtime service of inspecting track from Mile Posts 00.0 to 3.0 on the Beltline, Mile Posts 00.0 to 5.0 south and Mile Posts 00.0 to 17.3 on the Main Line west, in the vicinity of Denver, Colorado, on September 9, 2007 instead of senior Extra Gang Foreman L. Martellaro (System File D-07-51/1486081).**
- (3) 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 time and one-half rate of pay.**

- (4) As a consequence of the violation referred to in Part (2) above, Claimant L. Martellaro shall now be compensated for three (3) 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.

As shown by the Statement of Claim, the instant dispute consists of two claims that were combined for the hearing before the Board. Their records are identical for all practical purposes except for the separate dates on which the two claims arose.

The Board addressed a similar claim in Third Division Award 40805. We carefully reviewed the two records for the instant claims and do not find them to be significantly different from the record in Award 40805. The parties cited the same Rules and made the same contentions. As in the previous claim, the Carrier submitted evidence in the form of an email statement from one of its Supervisors. And as in the previous claim, the Organization again attempted to add a new set of contentions in its Submission based on Rule 26(h) that was not advanced during the claim handling on the property.

For the same reasons discussed in Award 40805, the instant claims must be 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 15th day of December 2010.