

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40925
Docket No. MW-41074
11-3-NRAB-00003-090382**

The Third Division consisted of the regular members and in addition Referee William R. Miller 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 Post 0.0 (Prospect-Fox Junction) westward to Rocky Siding, Mile Post 17.3 on January 12, 2008 instead of senior Extra Gang Foreman L. Martellaro (System File D-08-06/1500996).**
- (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 Post 5.0 South to Mile Post 5.0 West, Mile Post 0.0 to Mile Post 4.0 on the Belt Main Line and Mile Post 4.9 to Mile Post 1.0 Main Lines 1 and 2 on February 16, 2008 instead of senior Extra Gang Foreman L. Martellaro (System File D-08-10/1500997).**
- (3) The Agreement was violated when the Carrier assigned junior Extra Gang Foreman F. Casados to perform holiday overtime service of inspecting track from Mile Post 3.0 to Mile Post 17.5 West on February 18, 2008 instead of senior Extra Gang Foreman L. Martellaro (System File D-08-11/1500998).**

- (4) As a consequence of the violation referred to in Part (1) above, Claimant L. Martellaro shall now be compensated for six (6) hours at his respective time and one-half rate of pay.
- (5) As a consequence of the violation referred to in Part (2) 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.
- (6) As a consequence of the violation referred to in Part (3) above, Claimant L. Martellaro shall now be compensated for five (5) hours of overtime 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.

This case concerns three individual claims involving the same Claimant, handled separately by the parties on the property, but combined for the Board's resolution. The Organization has alleged that the Carrier improperly used a junior Foreman to work overtime inspecting tracks instead of using the Claimant who was senior, available and qualified for the work. The only distinguishing difference in the claims, are location, dates, and times.

The Organization asserted that the claimed overtime and double time work is not incidental to either employee's regular assignment; therefore, the work should have been assigned to the senior employee. The Carrier stated that the work was covered by Rule 26(h) WORK ON UNASSIGNED DAYS, and in accordance with that Rule the overtime is first offered to an employee who regularly does the work, rather than by seniority.

The undisputed facts indicate that the Claimant was assigned as an Extra Gang Foreman on Gang 5675, which was a Surface and Lining Gang that included other employees whereas the junior employee F. Casados was an Extra Gang Foreman on Gang 5354 with no other employees, who was responsible to cover extra jobs and relieve other Foremen.

Rule 26(h) states:

“WORK ON UNASSIGNED DAYS - Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.”
(Emphasis added)

Review of the correspondence on the property indicates that the Claimant was asserting seniority preference to the disputed overtime on the basis that neither he nor the junior employee regularly performed work of inspecting tracks. If neither individual regularly did the work in question, nor were both qualified, the Claimant's argument would be valid. However, in this instance the Manager of Track Maintenance stated the duties performed by Casados were in connection with his regular assignment because he was relieving the regular Track Inspector as part of his normal job responsibilities, which included the inspection of track. That statement was not effectively refuted on the property with any first hand evidence to the contrary. The Organization failed to make a prima facie case that neither employee regularly performed the disputed work during the workweek, whereas the Carrier demonstrated persuasively that the junior employee did perform such work during the week. The Board finds and holds that 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 24th day of March 2011.