

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40935
Docket No. MW-41175
11-3-NRAB-00003-100028**

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 holiday and rest day overtime service of inspecting track on the Wyoming Division between Mile Posts 17.5 and 56.7, Denver to Winter Park, Colorado, on July 4 and 6, 2008, instead of senior Extra Gang Foreman L. Martellaro (System File D-08-21/1508720).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Martellaro shall now be compensated for a total of fourteen (14) 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.

In this claim the Organization 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 Organization asserted that the claimed overtime work is not incidental to either employee's regular assignment, therefore, the work should have been assigned to the senior employee. The Carrier stated 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 instant case is identical to the three claims resolved in Third Division Award 40925 involving the same Claimant with the same arguments presented by the parties. The only distinguishing difference in the subject claim is the location, dates and times. Therefore, the Board finds and holds for the same reasoning set forth in the aforementioned Award that 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 24th day of March 2011.