

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40942
Docket No. MW-41039
11-3-NRAB-00003-090392**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 R. Rodriguez, S. Nelson and T. Wheeler, each junior employees of Gang 6586, to perform overtime snow removal duties on the Pocatello Subdivision on February 5, 6, 7 and 8, 2008 instead of G. Purkey, H. Brown and K. Owen (System File C-0835U-155/1501129).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants G. Purkey, H. Brown and K. Owen shall now each be compensated for a total of forty-one and one-half (41.5) hours at their 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 is an overtime dispute involving the assignment of snow removal work on the Pocatello Subdivision to three junior employees on Gang 6586, the same gang as the Claimants, on the four claim dates. According to the Organization, it involves the application of the following section of Rule 26, Work Week:

“(h) WORK ON UNASSIGNED DAYS - Where work is required by the Company to be performed on a day which is not 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.”

It is undisputed that the gang was split up, with the Claimants being assigned to work on the Namp Subdivision and the three junior employees on the Pocatello Subdivision. They were all performing snow removal work related to a severe snow storm in the area that the Carrier argued was an emergency. There is a dispute on the record concerning whether the employees were given the opportunity to volunteer to work closer to where they lived, with the Claimants selecting the Namp Subdivision, as asserted by Manager Track Projects McIntyre, or whether they were assigned to specific locations and hours without employee option or volunteer opportunity, as contended by the Claimants. However, it is clear that the overtime in dispute in this case occurred on the Pocatello Subdivision on dates when the three junior employees were working in that area doing snow removal and cleaning switches as part of their regular assignment, and the Claimants were working on the Namp Subdivision.

The Organization argues that the Carrier violated the seniority rights of the Claimants by failing to assign the overtime to them, when the Agreement gives them preference to it. It asserts that the entire gang was assigned to snow removal on the claim dates as their regular assignment, and it was the Manager's reliance upon location of residence, which is not a valid basis for assignment under the Agreement, that created the situation where the Claimants were not asked to work on the

Pocatello Subdivision and not given the opportunity to volunteer for any overtime work in that location.

The Carrier contends that there was no violation of the Agreement because the overtime was performed by the regular employees continuous with their regular assignments under Rules 26(h) and 35(k) citing Third Division Award 39300. It submits that overtime is not assigned by strict seniority but based on who is doing the work on a regular basis on the assigned workdays, which were the junior employees assigned on the Pocatello Subdivision, relying on Third Division Award 31294. The Carrier argues that because this was not the Claimants' regular assignment, it is not obligated to replace the regularly assigned employees with senior employees just because overtime becomes applicable, and that it has the right to make initial job assignments. It also asserts that the Organization failed to show how Rule 26(h) was violated or applicable, because it applies to work on a day which is not part of any assignment, which is not the situation involved here. Finally, the Carrier notes that it argued and proved the existence of an emergency giving it latitude with respect to job assignments.

A careful review of the record convinces the Board that the Organization failed to establish a violation of Rule 26(h) of the Agreement by the overtime assignment in this case. The thrust of the Organization's argument is that the Claimants were not given the opportunity to volunteer on which job assignment and location they wanted, prior to the existence of the overtime opportunities protested herein. Despite the dispute of fact as to this allegation, the fact remains that the Carrier has the right to make job assignments, so long as they comply with restrictions in the Agreement. These assignments were on the Claimants' seniority district and are not shown to be inappropriate. The Organization states that had the Claimants known about the overtime opportunities they would have chosen to work on the Pocatello Subdivision. However, the Organization did not prove that the Carrier made the initial job assignments knowing the extent of overtime that would be involved in each assignment, thereby ignoring the Claimants' superior seniority and preference to overtime, or in violation of their rights under the Agreement. Once the Claimants were regularly assigned to work on the Namp Subdivision during the claim dates, they did not have an Agreement preference to overtime on the Pocatello Subdivision so long as it was assigned to the regular employees performing those functions at that location during their regular daily

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assignments. The record supports the conclusion that it was. Thus, the Organization did not sustain its burden of proving that the Claimants' rights were violated in this case.

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.