

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41472
Docket No. MW-41373
12-3-NRAB-00003-100275**

The Third Division consisted of the regular members and in addition Referee Brian Clauss 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 carrier violated the Agreement when it failed to call regularly assigned Section Gang 6103 Truck Operator M. Jacobs to perform overtime duties of operating the Section Gang 6103 truck on May 8, 2009 and instead called and assigned Foreman K. Wuthrich (System File C-0935U-156/1520131).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Jacobs shall now be compensated for ten (10) 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.

The Organization claims that the Carrier violated the Agreement by assigning Foreman K. Wuthrich to work on the territory covered by Section Gang 6103. Foreman Wuthrich drove a truck during his overtime assignment and the Claimant was the regularly assigned Truck Driver on Section Gang 6103 and should have been assigned the overtime work. Truck driving is not part of Foreman Wuthrich's job on Section Gang 6103.

The Carrier counters that the Foreman is responsible for providing supervision to subcontractors working on the territory of Section Gang 6103. The subcontractor was dumping ballast on the territory and the Foreman was necessary to supervise. Driving the truck was incidental to the Foreman work. Only one individual was necessary to perform the supervision work and Foreman Wuthrich was the proper person.

Rule 5 provides:

"Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing provided the tasks are within the jurisdiction of the BMW.".

The burden is on the Organization to establish a violation of the Agreement. The Board carefully reviewed the record evidence and finds that the Organization failed to prove a violation of the Agreement. The record establishes that a ballast train was operating on the territory of Section Gang 6103 on May 8, 2009. Supervision of the subcontractors was required for the dumping of the ballast. Foreman Wuthrich was the regularly assigned employee to provide the supervision, not the Claimant. Driving the truck was incidental to the work of supervising the ballast work. Accordingly, 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 13th day of December 2012.