

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No.41591
Docket No. MW-41766
13-3-NRAB-00003-110387**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Mr. R. Brown to perform overtime service commencing on April 16, 2010 and continuing through April 23, 2010 and instead assigned junior employee C. Ledford (System File D-10-38/1537351).**
- (2) The claim referenced in part (1) above, as appealed by General Chairman C. M. Morgan on September 8, 2010 shall be allowed as presented because said claim was not disallowed by Director Labor Relations B. W. Hanquist in accordance with Rule 49.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Brown shall ‘. . . now be compensated for any and all overtime hours of wage loss suffered at his respective rate(s) of pay, for work performed by junior employee Ledford, commencing on April 16, 2010 and continuing through April 23, 2010. The junior employee worked from 6:30 PM through 8:00 AM on each of the claimed dates.’”**

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 filed the instant claim on behalf of the Claimant alleging that the Carrier violated the parties' Agreement when it failed to call and assign him to perform certain overtime service, and instead assigned the work to a junior employee.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier failed to disallow the appeal in accordance with the time limits set forth in Rule 49 (2) the Carrier violated the Agreement when it failed to call and assign the Claimant to perform the work at issue and instead called and assigned a junior employee to perform the work (3) there is no merit to the Carrier's defenses, and (4) the Claimant is entitled to the remedy requested. The Carrier counters that the claim should be denied in its entirety because the Carrier properly assigned the overtime duties at issue and the Organization failed to meet its burden of proof.

The Board reviewed the procedural argument raised by the Organization and finds that the Organization met its burden to prove that the Carrier did not comply with the requirements of Rule 49.

After going through the confusing record of correspondence, the record reveals that the claim on behalf of Claimant Brown was filed on June 1, 2010, by General Chairman Morgan, whose offices are in Colorado Springs, Colorado. The Carrier timely responded to that claim and denied it by letter dated July 23, 2010. Said letter was properly sent to General Chairman Morgan in Colorado Springs. The Organization appealed the Carrier's denial within 60 days on September 8, 2010, with a letter from General Chairman Morgan of Colorado Springs, Colorado, to General Director of Labor Relations Brant Hanquist. The problem arises when the Carrier denied the Organization's appeal by letter dated November 7, 2010, with a letter directed to General Chairman Morrow in Lyman, Wyoming.

Rule 49 states, in part:

“Should any such claim or grievance be disallowed, the Carrier will within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented”

The Carrier did not send the denial of the appeal to the individual who had filed it. The Carrier sent the denial to a different General Chairman in a different state. Under the strict terms of Rule 49, the Board has no choice other than to sustain the claim as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of March 2013.