

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41776
Docket No. MW-41349
13-3-NRAB-00003-100173**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
**(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call Mr. T. Vinson for overtime snow removal service in Des Moines, Iowa on November 30, 2008 and instead called and assigned Mr. M. C. Hopkins (System File R-0931C-303/1514631 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Vinson shall now be compensated for twelve (12) 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 filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to call the Claimant for overtime snow removal work on November 30, 2008, but instead called a different employee to perform this work.

The Organization contends that the claim should be sustained in its entirety because (1) the Claimant was entitled to the overtime work at issue, (2) the Carrier's defense is without merit, and (3) the requested remedy is in accordance with Rule 23 (L). Conversely, the Carrier contends that the claim should be denied in its entirety because (1) the Claimant is junior in Trackman seniority and was not the regular employee for the work being performed, (2) the Carrier properly applied the Agreement, and (3) nothing in any of the listed Rules gave the Claimant a superior right to the work.

The Board reviewed the record and finds that the Organization failed to meet its burden to prove that the Carrier violated the Agreement when it called the senior employee (M. C. Hopkins) with Trackman seniority to respond to the snow emergency on November 30, 2008. The record evidence reveals that Hopkins was the regular employee to perform the disputed work. The Claimant was junior in Trackman seniority and was not the regular employee for the type of work (snow removal) that was being performed on overtime. We reviewed all of the cited Rules and conclude that nothing gave the Claimant a superior right to the work that was performed by Hopkins.

The Organization bears the burden of proof in cases involving a claim for work. Because the Organization failed to meet that burden, the Board has no alternative other than to deny the claim.

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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 25th day of November 2013.