

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41806
Docket No. MW-42121
14-3-NRAB-00003-130071**

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: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign I&R Foreman B. Randall, Jr. to perform track protection duties for a contractor cutting up cars at a derailment site at Readfield, Maine between Mile Posts 136 and 137 on February 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, 2011 and instead assigned B&B Foreman D. Stover (Carrier’s File MW-11-06).**
- (2) As a consequence of the violation referred to in Part (1) above and the resulting loss of overtime, Claimant B. Randall, Jr. shall now be compensated for a total of ninety-two and one-half (92.5) hours at his respective overtime 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 claim protests the Carrier's assignment of NORAC qualified B&B Foreman D. Stover to provide track protection to outside contractors cleaning up a derailment site, rather than the Claimant, an I&R Foreman on Crew 3645 in the Track Sub-Department. It is based on the language of Articles 2.1 (Intra-Craft Jurisdiction), 5.2 (Seniority Classes) and 10.4 (a), (c) and (d) (Overtime), as well as the contention that it is the Track Sub-Department that historically and customarily provides service in question, contained in the written statement of General Chairman (Track Foreman) Tracy.

During handling on the property, the Carrier contended that (1) it had historically used qualified employees from all Departments to provide Form 4 protection to third parties, (2) noted that Stover was properly assigned to this job on his territory during regular work hours, so the overtime associated with it was a continuation of the work being performed pursuant to Article 10.4(a), and (3) explained that the Claimant's crew was needed for patrols at the time of the assignment.

Conversely, the Organization argues that (1) seniority governs the assignment of work to qualified employees pursuant to Article 8.1 and 8.2, (2) historically this type of work has always been assigned to Track Sub-Department personnel - not the B&B Sub-Department - and (3) the Claimant should have received the assignment and corresponding overtime rather than Stover based upon his seniority and qualifications. It further notes that the Carrier's defenses are without merit and that the Claimant is entitled to the requested remedy concerning his lost overtime opportunity.

In response, the Carrier contends that the Organization failed to sustain its burden to prove a violation of any of the Agreement provisions cited in its claim which, coincidentally, do not limit its right to make work assignments related to providing protection service to any qualified employees, because such work is not specifically reserved to any classification pursuant to the Agreement and has been historically assigned to all Departments. It further asserts that the General Chairman's written statement does not provide sufficient support for the Organization's assertion of a historical practice, which could not control in the face

of clear and unambiguous Agreement language in any event. The Carrier contends that the overtime assignment, which is being protested herein, was a continuation of the work being performed as the result of a proper assignment pursuant to Article 10.4(a). It also takes issue with the claim for compensation for the Claimant who sustained no economic loss during the claim period.

A careful review of the record evidence convinces the Board that the Organization failed to carry its burden of proving that the protection work performed in this case was reserved by Agreement, custom or past practice to the I&R Foreman classification. Because the Claimant had no Agreement right to the straight time assignment, he was not entitled to the claimed overtime compensation that arose as a continuation of that assignment, and was properly given to Stover pursuant to the language of Article 10.4(a). Because the Organization failed to prove a violation of the parties' Agreement, the 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 27th day of February 2014.