

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42185  
Docket No. MW-41644  
15-3-NRAB-00003-110332**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 assign System Gangs 9096/9639 employees B. Higgs, B. Miller and D. Bracken to move System Gangs 9096/9639 equipment from La Grande, Oregon to Green River, Utah on February 24, 25 and 26, 2010 and instead called and assigned Gang 9399 employee T. Bowles, Gang 9658 employee B. Kimball and Gang 9094 employee B. Glauser (System File L-1035U-451/1535556).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants B. Higgs, B. Miller and D. Bracken shall now ‘\*\*\* be paid eleven (11) hours overtime per day, for each of the three (3) days, February 24, 25 and 26, 2010, for a total of thirty-three (33) hours overtime each, at their respective rates of pay, for all hours worked by the above named employees who were called, assigned and used to perform service of moving equipment assigned to the Claimants. \*\*\*’”**

**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 this claim after the Carrier failed to assign members of Gangs 9096/9639 to move the Gangs' equipment from La Grande, Oregon, to Green River, Utah, on February 24, 25 and 26, 2010, a distance of some 688 miles. Instead, employees from gangs based in Green River were given the assignment.

In February 2010, Gangs 9096/9639 were working an alternate T-1 schedule, which meant that they worked February 1-8 and February 16-22, and the remaining days of the month were their scheduled rest days. Other gangs were working the T-2 schedule, or February 9-15 and February 23-28. In February 2010, Gangs 9096 and 9639 were scheduled to move their headquarters from Seattle, Washington, to Green River, Utah. On February 21, the Claimants' supervisor, J. Russell, assigned gang members to move the involved equipment first from Seattle to La Grande, and then from LaGrande to Green River. The Claimants moved the equipment to La Grande and had volunteered for the second half of the move, starting when they returned to work on March 1, 2010, and continuing until the move was completed. On March 1, as the Claimants were proceeding toward La Grande, they got a call from Foreman T. Rossetto, who advised them that the Carrier had assigned other employees working a T-2 schedule to complete the move during the T-1 rest period (that is, while the Claimants were on their scheduled rest period). The record evidence reveals that the gangs involved were not working back-to-back (i.e., working in tandem on complementary schedules).

According to the Organization, the assignment to move the gangs' equipment at issue here is identical to the previous movement of the gangs' equipment when it changed headquarters from Coolidge, Arizona, to Seattle, Washington, which the Claimants performed. The Claimants were regularly assigned employees on Gangs 9096/9639 and, as such, were regularly involved in moving the gangs' equipment to new headquarter locations. When the Carrier called in gang members from Green River not affiliated with Gangs 9096/9639 to move those gangs' equipment to the headquarters, the Claimants were deprived of their right under Rule 26 to perform

their assigned duties, for which they would have been compensated at time and one-half their respective rates of pay had the Carrier allowed them to perform the work. Rule 26(h) states:

**“WORK ON UNASSIGNED DAYS – Where work is required by the Company to be performed on a day which is not a 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.”**

The Carrier responds that the T-1 and T-2 schedules mean that two or more separate gangs can work with the same equipment, on opposite days, so that it can have full monthly coverage even when one or more gangs are observing their scheduled rest days. Because the Claimants were on a T-1 schedule and were observing their rest period when the equipment was moved, they could not have been the “regular employees” for the work, as referenced in Rule 26(h). The Carrier is not obligated to pay premium overtime when there are regularly assigned employees readily available to perform the work at their straight time rates of pay. Nor was the Carrier obligated to put the work on hold during the Claimant’s rest period. The Claimants did not have exclusive rights to the work at issue, and the claim should be denied.

The record establishes that, initially, the Claimants had volunteered to move the equipment at issue from La Grande, Oregon, to Green River, Utah, when they returned to work on March 1, 2010, following their rest period, and had been assigned to do so. However, the record also includes evidence that suggests what happened to cause the equipment to be moved from La Grande to Green River sooner than anticipated: in the Organization’s Initial Questionnaire/Information Form for Claims or Grievances, the Claimants wrote: “On our days off we got a call saying that another gang would drive up to La Grande & get our equip. and move it to Green River for us so they could use it because theirs had broke down [sic].” (Emphasis added) In other words, the equipment, which was being moved to Green River to be used by the gangs headquartered there, was needed there sooner than planned – in fact immediately – by one (or more) of those gangs because the equipment already on site had broken down.

The fact that the Claimants had initially been assigned to move the equipment from La Grande to Green River when they returned from their rest period does not mean that, if the equipment needed to be moved sooner, the Carrier had an obligation to call them in on overtime to perform the work. Even when they are not formally

working back-to-back, employees on gangs that work complementary T-1 and T-2 schedules have to share equipment so that the Carrier can continue its operations while gangs are observing their rest periods; the existence of compressed work schedules does not require the Carrier to cease operations while one gang is on the extended rest period that the alternate schedule affords them. Finally, the equipment was not being operated for its intended purposes; it was merely being moved from one location to another. No employee "owns" that work, and the Carrier was within its rights to assign other employees at the straight rate of pay to move the equipment when necessity mandated that it be moved before the Claimants returned from their rest period on March 1, 2010.

**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 28th day of October 2015.