

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 42256  
Docket No. MW-42364  
16-3-NRAB-00003-130381

The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference  
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(Terminal Railroad Association of St. Louis

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed senior Track Foreman R. R. Mathes from the position of main line track inspector and assigned junior Track Foreman J. Black thereto beginning on June 29, 2012 and continuing (Carrier’s File T062912-01).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. R. Mathes shall be returned to the position of Main Line track inspector and he shall be compensated for all overtime hours worked by junior Track Foreman J. Black at the applicable overtime rate beginning on June 29, 2012 and continuing until the violation ceases.”

**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.

There is no dispute between the Parties that the matter of seniority is of fundamental significance and importance in any collective bargaining agreement in that it is a determinative factor relative to the administration of multiple provisions contained within such agreements. Likewise, there is no dispute between the Parties that the Claimant has greater seniority than that possessed by employee J. Black, both of whom are Track Foremen within the Track Sub-department at the Carrier's Madison Yard located in Venice, Illinois.

What is in dispute here is whether seniority is the determinative factor relative to the Carrier making assignments of Track Foremen to work the various positions of Track Gang Foreman, Main Line Track Inspectors and Yard Inspectors where such positions are known in advance by the Carrier to have substantial overtime opportunities.

For more than four years prior to the claim dates in question and continuing, the Claimant had been regularly assigned to the position of Main Line Track Inspector; and during the summer months, said assignment regularly involves working a substantial amount of scheduled overtime. The Organization argues that the Claimant was regularly assigned to work the Main Line Track Inspector position due to his superior seniority in the Foreman class and that the Carrier violated myriad provisions of the controlling Collective Bargaining Agreement when it began assigning said position to the less senior employee, Foreman Black, and at the same time, assigning the Claimant to the position of Yard Inspector - a position that had little to no scheduled overtime opportunities. The Organization ventures that the Claimant's change in work assignments was a vindictive act on the part of the Claimant's Supervisor because the Claimant filed a time claim, and that in so doing, said change in assignment violated the Claimant's contractual seniority. The Organization alleges that the Carrier's failure to respect the Claimant's seniority rights resulted in a substantial monetary loss to the Claimant.

The Carrier refutes the Organization's argument asserted, contending that due to the fact that Foreman positions are bulletined as "system" positions, Foremen can be assigned any of the positions that encompass Foreman work because there is no contractual obligation to be complied with relative to which employee is assigned to which position. The Carrier takes exception to the Organization's allegation that the Claimant was removed from his regularly assigned position as a Main Line Track Inspector, asserting that there is no preference of work for Foremen when assigned on a daily basis. As far as overtime opportunities are attendant to position assignments, the Carrier notes that working overtime is subject to the provisions of Rule 31 of the Parties' Agreement - the provision on Overtime - and specifically Section (g) of Rule 31, which reads, in pertinent part, as follows:

**“Overtime work required following and continuing with the regular eight (8) hour work period shall be performed by the necessary senior employee working on the job.”**

The Carrier asserts that on the claim dates in question, Foreman Black worked the associated overtime in compliance with Rule 31 (g) because he was the senior employee who was assigned to work the position of Main Line Track Inspector.

With regard to the Organization’s assertion that the Claimant’s Supervisor’s decision to assign him to the Yard Inspector position on the claim dates in question and continuing was a reaction to the Claimant having filed a time claim is nothing more than mere speculation and totally left unproven by any evidence, let alone substantial evidence, by the Organization.

The Board can find no evidence that supports the Organization’s argument that the Carrier is under a contractual obligation to make daily position assignments to Track Foremen on the basis of their seniority, nor any contractual obligation to show them any preference with regard to position assignments made on a daily basis. While the Claimant was assigned to work the position of Main Line Track Inspector for more than four years, this did not constitute any entitlement absent controlling Agreement support on his behalf to continue to be assigned to that position. Accordingly, the Board rules to deny the subject claim in its entirety.

**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 29th day of February 2016.