

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42399
Docket No. MW-42025
16-3-NRAB-00003-120395

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Seniority District T-7 Surfacing Gang 3058 employes K. Reed, E. Portner, R. Melheim to perform track surfacing work on Seniority District T-2 territory between Mile Posts 108 and 85 on the Fairmont Subdivision beginning on April 11, 2011 and continuing instead of Seniority District T-2 Surfacing Gang 2921 employes E. Lorenzen, F. Pearson and S. Sieble (System File B-1105C-102/1554898 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants E. Lorenzen, F. Pearson and S. Sieble shall now each be compensated at their respective and applicable rates of pay for all straight time and overtime hours expended by the employes of Seniority District T-7 Surfacing Gang 3058 in the performance of the aforesaid work on Seniority District T-2 territory beginning April 11, 2011 through May 31, 2011 and continuing thereafter.”

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 basic facts of this case do not appear to be contested. Claimant E. Lorenzen has established and holds seniority as a Foreman in the Track Subdepartment on the T-2 Seniority District, which includes the Fairmont Subdivision. On the relevant dates, Claimant was assigned on Gang 2921, headquartered at Mason City, Iowa on the T-2 Seniority District with a work schedule of 7:30 A.M. to 3:30 P.M., Monday through Friday with Saturday and Sunday observed as rest days.

Claimants F. Pearson and S. Sieble have established and hold seniority as Machine Operators in the Track Subdepartment on the T -2 Seniority District, which includes the Fairmont Subdivision. On the relevant dates, Claimants Pearson and Sieble were assigned to their Machine Operator positions on Gang 2921 headquartered at Mason City, Iowa on the T-2 Seniority District with a work schedule of 7:30 A.M. to 3:30 P.M., Monday through Friday with Saturday and Sunday observed as rest days.

Employee K. Reed, E. Portner and R. Melheim have established seniority in various classifications within the Track Subdepartment on the T-7 Seniority District, which does not include the Fairmont Subdivision. On the relevant dates, said employees were assigned to their respective positions on Gang 3058 headquartered at St. James, Minnesota on the T-7 Seniority District.

Beginning on Monday, April 11, 2011, the Carrier assigned employees K. Reed, E. Portner and R. Melheim from Gang 3058 to perform track surfacing and lining work from Mile Posts 108 to 85 on the Fairmont Subdivision located on the Seniority District. There was no dispute that the area in which the work at issue was performed was within the T-2 Seniority District, and that T-7 Seniority District employees K. Reed, E. Portner and R. Melheim do not retain seniority on the T-2 Seniority District. The Claimants do retain seniority on the T-2 Seniority District, and according to the Organization, were readily available, fully qualified and

willing to perform the subject work, and would have done so had the Carrier afforded them the opportunity.

According to the Organization, although Claimants should have been assigned the relevant work, the employees on the T-7 Seniority District were improperly assigned the work. The Carrier claims that there was an emergency, but the Organization rejects this claim. The Carrier assigned the T-7 employees the work as a matter of “convenience,” and not due to a true emergency. The Organization claims that as a result of the Carrier’s actions, Claimants lost work opportunities. The Organization submitted a Claim contending that the Carrier had violated the Agreement by not selecting Claimants for the relevant work. As a result of the Carrier’s actions, the Organization requests compensation for Claimants’ lost opportunities.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that while it is uncontested that Claimants were on the relevant Seniority District, and that the relevant employees were assigned to the work, the instant case involved a true emergency that required the Carrier to assign the relevant employees to perform the work. The evidence in this matter substantiated the emergency, and the Carrier contends that it acted within its Management Rights in assigning the work to the T-7 employees. Further, even if Claimants should have been assigned the work, they were nonetheless fully employed and no further remedy is required. The Carrier asks that the Claim be denied in its entirety.

In the instant case, this Board cannot find that the Organization has been able to meet its burden of proof to show that Claimants should have been assigned to the relevant work. The evidence in the record proves that a bona fide emergency existed, which allowed for the Carrier to assign the relevant employees to the work. Therefore, in the instant case, we cannot find that the Carrier acted unreasonably in denying Claimants the work in question. The claim is denied.

AWARD

Claim denied.

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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 31st day of October 2016.