

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42433
Docket No. MW-41957
16-3-NRAB-00003-120283**

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 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 Agreement was violated when the Carrier failed to call and assign Common Machine Operator S. Duda to operate a common machine (speed swing) at Global 1 on the Rockwell Subdivision on February 22 and 23, 2011 and instead called Foreman A. Martinez (System File J-1131C-360/1551322 CNW).
- (2) As a consequence of the violation referred to in Parts (1) above, Claimant S. Duda shall now be compensated for nine (9) hours at the applicable 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.

The record evidence reflects that a derailment occurred at the site of Global 1 on the Rockwell Subdivision and, as a result, track repair work needed to be performed. Notwithstanding the fact the track repair work performed was in conjunction with a derailment, there was no argument asserted by either Party to this dispute that the disputed work was due to an emergency situation.

The employee called by Carrier to perform the subject track repair work was A. Martinez, a Foreman on Gang 3244. Martinez, according to the record evidence has a District D-9 Common Machine Operator seniority date of September 14, 2001 and a Service date of June 12, 2001. Claimant, on Gang 3181 has a District D-9 Common Machine Operator seniority date of August 16, 2002 with a Service date of June 13, 2002. Although both Gang 3244 and Gang 3181 operate in the Rockwell Subdivision and the site of the derailment at Global 1 is also part of the Rockwell Subdivision, Global 1 is not part of either Gangs assigned regular territory.

The record evidence reflects that in performing the track repair work, Foreman Martinez operated a speed swing machine, known to be a “common” machine. The Organization contends that Claimant should have been called to perform the track repair work as opposed to having called Foreman Martinez based on his regular assignment and his seniority as a “common” machine operator. In support of its position the Organization relies on Rule 23 – Work Week, specifically section L and Rule 31 – Calls, specifically section A of the Controlling Agreement. Said cited sections of both Rules read as follows:

“Rule 23 L. Work on unassigned days – Where work is required 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 shall otherwise not have 40 hours of work that week; in all other cases by the regular employee.

Rule 31 A. Employees called to perform work not continuous with regular work period shall be allowed a minimum of two hours and forty minutes at rate and one-half, and if held on duty in excess of two hours and forty minutes shall be compensated on a minute basis for all time worked. When necessary to call employees under this rule, the senior available employees in the gang shall be called.

In denying the claim, Carrier asserted Rule 23(L) did not obligate it to call Claimant to perform the disputed work as it was not his territory and the Organization failed to provide any valid evidence to show that the Claimant was,

pursuant to Rule 23(L) the “regular” employee or that Claimant was “an available extra or unassigned employee who shall otherwise not have 40 hours of work that week” Additionally, Carrier asserted that Rule 31(A) did not support the Organization’s position as Foreman Martinez was not in Claimant’s gang, Gang 3181 and even if he were, Claimant was junior in seniority to Martinez as shown by their respective Service dates as well as their respective Common Machine seniority dates.

It is further the Carrier’s position that because neither the Claimant’s gang, Gang 3181 nor Martinez’ gang, Gang 3244, is a part of the regular assigned territory that encompasses Global 1, the site of the derailment, it is solely within the right of management to determine which gang should be called upon to perform the work in question. Here, Carrier called upon Gang 3244 and determined that Martinez was the senior employee qualified to perform the disputed work.

In consideration of all argument asserted by both Parties, and based on the evidence presented, the Board is persuaded Carrier did not, as alleged by the Organization, violate applicable provisions of the Controlling Agreement when it called Foreman Martinez and not Claimant to perform the track repair work due to a derailment situation at Global 1 on the claim dates in question. 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 31st day of October 2016.