

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42434
Docket No. MW-41962
16-3-NRAB-00003-120305**

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 Foreman T. Noakes to perform overtime service in repairing and cleaning up a derailment in the Proviso yard on February 19, 2011 and instead called Track Inspector K. Gabriel (System File B-1131C-101/1551319 CNW)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Noakes shall now be compensated for sixteen (16) hours at his respective overtime rate of pay and for three (3) hours at his respective double time 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 Carrier related that on Saturday, February 19, 2011 a derailment occurred in its Proviso Terminal Yard, Elmhurst, Illinois. Carrier deemed the derailment to constitute an emergency situation. As part of its effort to ascertain the causative factors of the derailment it called out Track Inspector K. Gabriel to inspect the tracks involved in the derailment as track inspectors are the regular employees for inspecting track for defects. Contrary to Carrier's position that Track Supervisor Gabriel was called to perform the work of track inspection, the Organization asserts the work performed on overtime by Gabriel was actually track maintenance. As such, the Organization argues Carrier should have called the Claimant, T. Noakes, the regular Foreman on Gang 3197 that is headquartered at the Proviso Yard explaining that the regular duties of Gang 3197 consist of performing maintenance in and around the yard which includes derailment repair and cleanup work. Carrier maintains that, in fact, it did call Claimant in his capacity as a foreman to request his services associated with the work required by the derailment but that Claimant failed to respond to the call. However, Claimant did report to work at Proviso Yard for his normal night shift hours the evening of February 19 and worked not only his regular shift hours but also an additional ten and one-half hours of overtime going into Sunday, February 20, 2011 performing the work of clean-up operations.

The Organization asserts that Gabriel's duties as a track inspector does not include the duties of track maintenance or repair whereas those duties are the duties performed by the Claimant in his position of Foreman on Gang 3197. Additionally, the Organization in noting that Gabriel worked a total of 19 hours, 16 of which were on overtime and the remaining three hours were on double overtime, posits that not only is it unsupported by evidence it is also unrealistic to believe that Gabriel was performing track inspection for all those hours as the subject derailment occurred in Carrier's terminal yard, a relatively limited area in size. Moreover, the Organization refutes Carrier's position it called Claimant for the overtime work associated with the derailment as it has examined Carrier's call records and there is no record of Claimant being called. In any event however, the Organization submits that Carrier's asserted defense that it did call Claimant in response to the emergency brought about by the derailment is sufficient to prove the call to Claimant was to secure track maintenance services as track inspection services does not fall within the ambit of his duties. Carrier then called Gabriel a track inspector under the guise his services were needed to ascertain the causative factors of the derailment.

The Carrier asserts that while it called Gabriel to perform the work of track inspection it was not calling Claimant to perform inspection work. Rather, it called Claimant but without success to work in the capacity as foreman to perform the work of falling within his regularly assigned duties of derailment cleanup. As such, Carrier

asserts the Organization failed to meet its burden of proof to show by a preponderance of the evidence that Claimant should have been called in place of Track Supervisor Gabriel to perform Gabriel's work of track inspection when such work does not fall within the ambit of Claimant's duties.

While it is in reality dubious that Gabriel expended all 19 hours engaged in the work of inspecting track to determine the causative factors involved in the derailment, it is not beyond the realm of reality to conclude based on the fact circumstances presented by the Parties for the Board to conclude that the Organization has confused the call made to Gabriel with the unsuccessful call made to the Claimant. In other words, the Board is persuaded that Carrier did not call Gabriel as a result of Claimant not responding to the emergency call made to him. Gabriel was called to perform the work of track inspection and Claimant was called to perform the work of track maintenance. The fact circumstances make clear the calls were separate calls to each employee to report for overtime emergency work but work that entailed the different duties of each employee, Gabriel and the Claimant respectively. Had Claimant taken the emergency call Carrier still would have called out Gabriel to perform the work of track inspection. Even under the given factual circumstances before the Board Gabriel was proven to have engaged in some degree of track maintenance work during the 19 hours he worked the scene of the derailment, such degree of work involvement is determined to have in no way precluded any loss of work opportunity for the Claimant; as Claimant wound up working a substantial amount of overtime performing clean-up duties.

Based on the foregoing discussion and analysis, 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.