

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42470
Docket No. MW-42021
16-3-NRAB-00003-120389

The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(Union Pacific Railroad Company (former Missouri
(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 call Track Foreman A. Hopper for overtime track patrol service in the vicinity of Lewisville, Arkansas on April 5, 2011 and instead called Welder K. Henderson (System File UP735SN11/1555135 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Hopper shall now be compensated for six (6) hours at his 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.

By letter dated May 13, 2011, the Organization submitted a claim and grievance to the Carrier alleging that the Claimant, a Track Foreman on the Arkansas Division, was passed up for an overtime assignment of patrolling track, for which he was qualified, and was given instead to a Welder with less seniority. Six hours' pay at the overtime rate was requested as a remedy. The letter stated, "The Claimant also states that he has a telephone which was in working order on the claim date, was at home and available for duty but, was not called."

The Carrier, by an Engineering Supervisor, replied by letter dated July 7, 2011, in which it stated that it followed proper procedure in that after the Claimant failed to answer the Manager of Track Maintenance's call into service, it contacted the employee who performed the work. The Carrier's letter to the Organization contained as an attachment the following email from the Manager of Track Maintenance addressed to the Carrier Engineering Supervisor who answered the Organization's claim and grievance: "Subject: Response to Claim # M11-MOP178 Mr. Hopper did not answer his phone. He either needs to get a land line and not depend on his cell phone to receive calls." The Carrier stated that it "is under no obligation to make multiple attempts to reach an employee in hopes that the employee will finally answer the phone." The Carrier denied the claim.

The Organization appealed the denial by letter dated August 31, 2011. It asserted that the Manager of Track Maintenance's statement "does not indicate when or how many times he was called. The carrier failed to provide telephone records or a log showing calls were actually made to the Claimant on the date in question." The Organization further stated, "Mr. Hooper [sic] claims that Manager of Track Maintenance M.R. Hook 'work was not offered to me.'" The Organization added, "The Claimant also states that he has a telephone which was in working order on the claim date, was at home and available for duty but, was not called."

The Carrier replied to the appeal by letter dated October 13, 2011. It pointed out to the Organization that it had provided a statement by the Manager of Track Maintenance saying that the Claimant was called to perform the overtime work but did not answer, causing him to assign the work to the other employee. The Carrier asserted that the Organization, which has the burden of proof, "has failed to provide any documentation in support of its position or to refute that of Manager Hook."

When the Carrier challenged the Organization's assertion that the Claimant had a telephone which was in working order on the claim date, was at home and

available for duty, but was not called, it was incumbent upon the Organization to prove its assertion by probative evidence. Third Division Award 36977 involving these same parties. The Organization failed to provide any proof of its assertion. The only proof provided in this case, as opposed to bare assertion, is the Manager of Track Maintenance's email statement (under the subject reference M11-MOP178, the file number assigned to the claim by the Carrier after it was filed) that the Claimant did not answer his phone. The Board finds that the Organization failed to prove a violation in this case.

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 November 2016.