

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42497
Docket No. MW-41847
17-3-NRAB-00003-120137**

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

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 Eugene Yard Gang 8959 employees A. Gallegos, K. Ritter, M. Hamari and A. Estrada to perform overtime rail replacement work in the Eugene Yard on September 11 and 12, 2010 and instead called and assigned Gang 8960 employees (System File L-1028S-455/1544181 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants A. Gallegos, K. Ritter, M. Hamari and A. Estrada shall now each be compensated for twenty-two (22) hours at their respective overtime rates 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 demonstrates that the Organization's employe statement, submitted to refute the Carrier's track department manager's statement, was not part of the on-property record of this claim.

Thus, in the record before this Board, the track department manager's statement stands unrefuted to establish that there was no defined "yard gang," and that local Carrier forces had been utilized both within the yard and outside the yard.

Therefore, the Organization has not met its burden of proof, and the claim must be denied.

The Organization's remaining arguments are unpersuasive on this record.

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 11th day of January 2017.