

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42519  
Docket No. MW-41760  
17-3-NRAB-00003-110397**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes Division -  
( IBT Rail Conference  
(  
(BNSF Railway Company (former Burlington  
( Northern Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to assign Mr. R. Crespin to overtime service (operate RSG Gang RP-17 passenger van) commencing on March 31, 2010 and continuing through April 9, 2010 and instead assigned junior employee R. Robinson (System File C-10-06/13-10-0014 BNR)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Crespin shall now be compensated for a total of seven (7) hours of overtime at his respective 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.**

At the time this claim arose, Claimant R. L. Crespin was assigned to operate a machine on Carrier's Regional System Gang (RSG) RP17. That gang performs major out-of-face rail renewal work in several seniority districts and has a total of 34 positions, 18 of which are Machine Operators. There is also a passenger van used to transport employees between the worksite and the lodging facility at the beginning and end of the work day, as well as being used for safety and emergency purposes when necessary. Driving the van is not a regular assigned position in the gang, but did involve frequent overtime service.

At the beginning of 2010, Claimant was directed to drive the van when he was not operating his machine. On March 31 through April 9, 2010, Roadmaster Frazier directed a Sectionman to drive the passenger van on a daily basis. On May 24, 2010, the Organization filed a claim on Claimant's behalf, alleging that the Carrier had improperly assigned a junior employee to operate the passenger van. The Carrier denied that claim in a letter dated July 21, 2010. The Organization appealed the Carrier's decision on September 20, 2010 and that appeal was again denied. The claim was then progressed in the usual manner including conference on the property in early March 2011, after which it remained unresolved. It is therefore properly before the Board for adjudication.

It is the position of the Organization that the Carrier violated (among other Rules) Rule 2 – Seniority Rights and Sub-Department Limits, and Rule 29 – Overtime, of the parties' agreement. Rule 2 reads in pertinent part:

- “A. Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided.
- B. Seniority rights of all employees are confined to the sub-department in which employed, except as otherwise provided in this Agreement.”

The Organization notes that it is undisputed that Claimant is senior to the Sectionman assigned to drive the van in his stead, that Claimant had driven the van for several years, and therefore had an entitlement to the overtime in question. In addition, the Organization contends that the argument that the option of assigning another, more junior, employee to the position is without merit. It maintains that there was a past practice of assigning the most senior employee on the RSG gang to the overtime inherent in driving the van.

For its part, the Carrier asserts that this was a managerial decision, based upon the needs of the operation of the gang, and since the van driver task was not a “bulletined” position, it had no obligation to assign Claimant to the task of driving the van, based upon his seniority. Moreover, it protests, the Roadmaster’s decision not to interrupt Claimant in the operation of his machine but to assign a Sectionman, was a purely managerial one, and involved a task not included in the bulletined positions of either Machine Operators or Sectionmen, but is ancillary to the general operation needs of mobile gangs.

The Board has read thoroughly both the Rules cited and the correspondence between the parties. There can be no dispute that, if overtime were required for Machine Operator work, Carrier would have been required to offer it first to Claimant if he were the senior Machine Operator on the gang. The Carrier has argued persuasively, however, that the work in question, driving and (occasionally maintaining) the van, is not a bulletined position, and that the Roadmaster was within his right to determine that it was more important for a Machine Operator to remain at his work than a Sectionman.

The Organization has not shown that such a determination was either capricious or arbitrary, or a ruse for passing over Claimant in assignment of the task. Thus, the Board finds itself in agreement with Third Division Award 35960 on this point. Also relevant are the findings of the Board in Award 20308, which held that, while seniority must be considered in awarding overtime in bulletined positions, non-bulletined work assignments may be made at the discretion of the Carrier according to operational needs. In light of the foregoing, the instant claim is denied.

**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.