

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42555
Docket No. MW-42280
17-3-NRAB-00003-130275**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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 arranged for St. James Section employees to work overtime in connection with a derailment repair on Worthington Section territory at Mile Post 166.25 on February 28, 2012 and continuing into February 29, 2012 instead of Worthington Section employees G. Lira, J. Grunewald and E. Nelson (System File B-1231C-106/1568547 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants G. Lira, J. Grunewald and E. Nelson shall now each be compensated for twelve (12) 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.

This is a case involving a derailment where gangs from adjoining territories were called to help. The Organization says that the overtime went to the wrong people.

The Rules in question are as follows:

“RULE 4 – SENIORITY

* * *

D. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company.

* * *

RULE 23 - WORK WEEK

* * *

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- CALLS

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 onehalf, 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.”

The facts in this case are not in dispute. On February 27, 2012, there was a 23 car derailment that occurred at Mile Post 166.25 on the Worthington Subdivision. The Carrier felt the need to utilize forces around the clock to make repairs, and restore the track for operations. The Carrier utilized the members of the Worthington section immediately because they were the closest to the location of the derailment. The Carrier sent home the employees of the St. James section home to rest. The St. James section was then used to relieve the Worthington section. The Carrier says that this utilization of employees allowed the Carrier to have around the clock operations and provide safe working conditions for its employees by ensuring they had opportunities for rest.

The Organization does not dispute any of this. They simply say that the Worthington section had the right to the overtime involved, not the St. James section.

The Carrier says, firstly, that emergency situations create a broader latitude for assigning work. Secondly, they say that both sections had seniority rights to this work and, thus, the Carrier could assign them in any order they chose. They point to Rule 5 and Appendix 8 of the Agreement, which set forth seniority boundaries. They say that this is the only restriction with respect to which employees may be called and that both sections were within the bounds of one seniority district. This was not disputed by the Organization. However, they say that traditionally each section has a territory for which they are responsible and that the “home” section should have had the overtime preference.

This Board finds that, while this may be true, there is no specific Agreement language which supports the position of the Organization. Instead, we are left with seniority district language relied upon by the Carrier.

As a result, the Board finds that the Organization is unable to meet its burden of proof.

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 6th day of March 2017.