

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42761
Docket No. MW-42960
17-3-NRAB-00003-140489**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(CSX Transportation. Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to offer or assign Claimant E. McMillian to perform overtime service on April 5, 2013 and instead offered such work to junior employee J. Watkins (System File S21161913/2013-143844 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. McMillian shall now be compensated for ten (10) hours 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.

On April 5, 2012, the Claimant was assigned as a Machine Operator on a System Production Gang. On that date, the Carrier determined that it required five employees to perform overtime work near Mile Post 00K 805.7. The Claimant was not one of the employees used to perform this work. The Organization claims he should have been used in lieu of Vehicle Operator J. Watkins, who is junior in seniority to the Claimant. The Organization alleges that Watkins performed Trackman work, specifically the removal of spikes and tie plates, which could have been performed by the Claimant.

The Carrier has asserted, and the Organization has not denied, that Watkins performed fuel truck work on this date. It says he is regularly assigned as a Fuel Truck Operator, and the work he performed consisted of the duties he regularly performed on his assignment. While the Carrier does not deny that Watkins may have performed other work with the gang on this date, it explains that the duties of a Fuel Truck Operator do not require the incumbent to spend the entire time refueling machinery. The Carrier argues it is entitled to require the Operator to perform other productive duties when refueling is not being done. That, says the Carrier, is the nature of his regular assignment.

Appendix S, Section (7)(B) of the Agreement addresses the assignment of overtime on System Gangs. In particular, it states, "The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required." In this case, the Carrier needed the services of a Fuel Truck Operator, which was Watkins' regular assignment. He was the appropriate employee to use, and the Carrier could require him to perform additional duties in the same manner it does during his regularly assigned hours.

During the handling of the claim on the property, the Organization objected to the fact that the Carrier did not provide payroll records for employee Watkins. The Carrier has responded that it is required, under Rule 24(i), to provide records only if they are relevant to the claim. It says the records requested by the Organization would show only the hours worked by Watkins and his rate of pay. It denies that the records would have shown the duties he performed, or how long he performed specific duties. This being the case, we do not find that the Organization has demonstrated why the records it had requested were relevant to this claim.

The Organization has not established that Claimant was entitled to be called for the work in question. The Agreement was not violated.

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 25th day of September 2017.