

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42777  
Docket No. MW-42959  
17-3-NRAB-00003-140411**

**The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Dakota, Minnesota & Eastern Railroad Corporation**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it assigned the Clinton Wednesday to Saturday Gang Members S. Sturtz, C. Steen, and M. Kerkove to perform overtime service dumping rock near Mile Post 2 on the Eldridge Subdivision near Davenport, Iowa on May 26, 27 and 28, 2013 instead of calling and assigning Messrs. R. Buchholz and R. Rice thereto (System File J-1315D-501/08-0005).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall now each ‘\* \* \* be compensated for the hours of overtime that employees of the Clinton Wednesday to Saturday gang worked performing maintenance work on the Claimants’ regular workdays and territory, at the applicable 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.**

**The issue as gleaned from the whole of the record proceedings simply boils down to Carrier having improperly assigned overtime work on the three claim dates in question as noted in the above Statement of Claim to employees other than the Claimants.**

**The Organization notes that Claimant Buchholz established and holds seniority as an Assistant Foreman in the Maintenance of Way Track Sub-department and Claimant Rice established and holds seniority as a Laborer in the Maintenance of Way Track Sub-department. The Claimants were regularly assigned to their respective positions on the Sunday through Wednesday section crew near Mile Post 2 on the Eldridge Subdivision near Davenport, Iowa with work hours of 6:00 A.M. through 4:30 P.M. at the time the events occurred which led to the instant claim now before the Board for decision. Employees Sturtz, Kerkove and Steen who were assigned by Carrier to perform the disputed overtime track maintenance and repair work of dumping rock on tracks in the vicinity of Mile Post 2 unlike Claimants, were not regularly assigned to perform such work near Mile Post 2 on the three claim dates in question which began on Sunday, May 26, 2013 and continued through Tuesday, May 28, 2013. On Sunday, the three employees each performed five hours of overtime work (5:00 P.M. to 10:00 P.M.); on Monday they each performed six and a half hours of overtime work (5:30 P.M. to 12:00 A.M.); and on Tuesday they each performed two hours of overtime work (12:00 A.M. to 2:00 A.M.). Thus each of the three employees performed a total of 13.5 hours of overtime work.**

**The Carrier asserts that on the claim dates in question extreme weather in the form of substantial rainfall hit the Quad Cities on Monday, May 26th, flooding out West Davenport Yard and causing service issues in other areas around the Quad Cities including Eldridge Subdivision and additionally the Davenport Subdivision and Ottumwa Subdivision. On Monday, May 27 after responding to the first service outage another strong weather system hit within a few hours (also substantial rainfall), causing extreme service issues for the all three Subdivisions noted above and now including a fourth subdivision, the Nitrin subdivision. The Carrier maintains that the volume of water that continued to fall made responding to the Eldridge subdivision impossible until later in the day noting that water was well outside the regular**

channels of the creeks in the area. Carrier noted the rain continued in the Quad Cities area into the early morning hours on Tuesday, May 28 and characterized the extreme weather and its effect on operations as constituting an emergency.

Given that Carrier deemed the weather conditions as an emergency, it asserted that pursuant to Rule 1 – Scope section 4 it had the contractual right to utilize the services of the three employees, Sturtz, Steen and Kerkove to perform the disputed overtime work in question. Rule 1, section 4 reads as follows:

**“It is understood that emergency service may be performed as determined by the Company.”**

The Organization refutes Carrier’s position that the prevailing rainfall conditions on the three claim dates in question constituted an emergency as the term emergency is known and defined in the railroad industry as, “an event that is sudden, unforeseeable and uncontrollable, which brings operations to an immediate halt”. The Organization asserts that Carrier’s operations did not come to an immediate halt at any time during the three claim dates in question and furthermore, Carrier was unable to prove by substantive evidence that the rainfall that occurred in the Quad Cities and specifically the Eldridge subdivision rose to the level of a weather emergency. As to Carrier’s reliance on Rule 1, section 4 of the Controlling Agreement permitting it to call out employees other than the Claimants to perform the disputed overtime work, the Organization submits that Rule 1, section 4 does not provide Carrier with an unfettered right to utilize the services of any employees it chooses to perform track and repair work, the same type of track and repair work that was performed in this instant case as Carrier is obligated even in emergencies to adhere to the provisions of Rule 15 – Overtime, section 1 which reads as follows:

**“When operating requirements or other business needs cannot be met during regular working hours, employees will be given the opportunity to volunteer for overtime work assignments. Employees must receive their manager’s prior authorization for all overtime work. Overtime will be distributed first to employees who regularly perform the work and, thereafter, as equitably as practical to all employees qualified and reasonably available to perform the required work.”**

The Organization submits that Rule 15, section 1 obligated Carrier to contact Claimants to solicit their willingness to perform the subject overtime work as

Claimants were the employees who regularly performed the disputed work as opposed to the three named employees utilized by Carrier who did not regularly perform the disputed work. The Organization submits and Carrier does not refute that it made no attempt to contact Claimants to perform the disputed work in question.

Based on our comprehensive review of the evidentiary record and the respective arguments presented by the Parties, the Board concurs in the Organization's position that the weather conditions referenced by Carrier on the three claim dates in question did not constitute an emergency as Carrier failed to produce substantive evidence in the way of documentation, of any kind, to support its position on this point. The Board is also persuaded that in failing to solicit Claimants at any time throughout the three claim dates in question to perform the overtime work in question but going forward instead to utilize the services of employees not regularly assigned to perform the work, Carrier violated Rule 15, section 1 of the January 1, 2013 Collective Bargaining Agreement.

Accordingly, based on the foregoing findings the Board rules to sustain the claim in its entirety including awarding the remedy sought here by the Organization.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of October 2017.