

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42893
Docket No. MW-43250
18-3-NRAB-00003-150495**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

PARTIES TO DISPUTE: (

(Lake Superior and Ishpeming Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employees S. Shepich and V. Carello to perform overtime work in the vicinity of the Marquette Ore Dock on Sunday June 1, 2014 instead of calling and assigning senior employees J. Sommers and J. Niemi thereto (System File C-14-14-090-01-L LSI).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Sommers and J. Niemi shall each be allowed five and one-half (5.5) hours’ pay 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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the Agreement when it assigned certain overtime work to two junior employees, rather than to the more senior Claimants, who were qualified, willing, and available to perform the work. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because there is no dispute that the Claimants hold superior seniority over the two junior employees who performed the overtime work at issue; because the Claimants were available, qualified, willing, and would have performed the overtime work at issue had they been assigned to it; because there is no merit to the Carrier's defenses; and because the Claimants are entitled to the requested remedy. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proving that the Carrier's actions violated the Agreement, and because the Carrier's reserved management rights allow it to set training and qualification standards.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to assign overtime work to the Claimants and instead assigned it to other junior employees. The Carrier needed two Organization-represented employees to perform emergency response work involving deploying an oil containment boom at the Marquette ore dock. The Carrier selected two qualified employees to perform the service. The Claimants had not been trained for that type of work. The Carrier required that only qualified and trained employees were to be called to deploy oil containment booms. The Carrier readily admits that the Claimants were not called to perform the work because they were not qualified.

It is clear from the Agreement that the Carrier must follow seniority order when making assignments for overtime; however, for this type of work, they could only assign people who are qualified to perform the work. Since the two Claimants in this case were not qualified, this Board finds that the Carrier did not violate the

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parties' Agreement when it assigned two other employees who were indeed qualified to perform the work at issue. Therefore, the claim must be 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 10th day of January 2018.