

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42909
Docket No. MW-43062
18-3-NRAB-00003-150298**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

- “(1) The Carrier violated the Agreement when it assigned junior Track Foreman Waldron to perform snow removal work at various locations on January 5, 6 and 7, 2014 instead of calling and assigning senior Track Foreman K. Casey (Carrier’s File T031014 05TRR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Casey shall now ‘... be paid 40 hours and 30 minutes overtime at his applicable Track Foreman’s 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.

This is a companion case to Third Division Award 42908. We note the facts and circumstances in that case to be identical to the facts and circumstances of this instant case. We therefore render the identical Findings and Award as follows:

“We have thoroughly examined Carrier’s assertion that this identical claim arose between the same Parties which was decided in arbitration before Referee Marty Zusman and memorialized in Third Division Award 32183, adopted in August, 1997, and concur in Carrier’s position that, that Award is controlling in this case. In effect, the bottom line of that Award establishes that during snow removal emergencies safety of Employees assigned to the work of snow removal trumps contract provisions such as, for example, establishment of fixed shifts that ordinarily would be applicable to work assignments under conditions other than weather emergencies. Furthermore, Award 32183 noted among other findings that the Organization never before challenged Carrier’s procedure of establishing twelve (12) hour shifts due to safety concerns for Employees assigned to snow removal work under emergency conditions which resulted in the claim being denied. In other words, the Organization was found to have slept on its rights nearly twenty-one (21) years ago and the Board is not about to overturn Award 32183 by contrary findings premised on identical facts and circumstances. Additionally, to be clear, we also find that Carrier did not under the prevailing circumstances as asserted by the instant claim violate the Claimant’s seniority rights in any way. Accordingly, we rule to deny the subject claim.”

AWARD

Claim denied.

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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 14th day of February 2018.