

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42950
Docket No. MW-43569
18-3-NRAB-00003-160186**

The Third Division consisted of the regular members and in addition Referee Sean J. Rogers when the award was rendered.

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

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

- “(1) The Agreement was violated when the Carrier failed to call and assign New Albin Section Gang Assistant Foreman M. Farley to perform overtime work on September 6, 2014 but instead called and assigned adjacent section gang member thereto. (System File B-1415D-104/8-0029 DME).**
- (2) As a consequence of the violation referred to Part (1) above, Claimant M. Farley <***be compensated for four (4) total man hours of overtime as shown earlier in the claim, at the applicable rate of pay.’ (Emphasis in original.)”**

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 an overtime dispute which arose on September 6, 2014 concerning the Carrier's failure to assign the Claimant to overtime service involving the cutting and removing of a fallen tree near Mile Post (MP) 105 on the Marquette Subdivision within the New Albin Section Gang territory. The fallen tree caused an interruption to service and needed repaired in the timeliest manner possible. The Carrier determined that an employee was needed to perform the work as overtime service.

The Carrier's Roadmaster Tim Mayer called the Claimant who regularly performed the work on his company cell phone. The Claimant did not answer his company cell phone. Meyer called the next employee available to perform the work.

The record establishes that the Claimant left his company cell phone in his company truck. As a consequence, the Claimant missed Meyer's call for the overtime work. During the on property handling, the Claimant stated that Meyer called him at 3:20 p.m. when his company phone was in the company truck.

The grievance claim asserts that the Carrier violated Rule 15 – Overtime, which states in pertinent part:

“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 the 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 asserts that the Carrier violated the collective agreement when it failed to assign the overtime work to the Claimant who regularly performs the work on the New Albin Section Gang territory. The Organization argues the Claimant was entitled to the overtime work over the employee, from another territory, who was assigned the MP 105 tree removal.

The Organization asserts that the Carrier did not call the Claimant on his personal cell phone after there was no answer on his company cell phone. The Organization argues that it is unreasonable for the Carrier to have called the Claimant on his company cell phone only. The Organization claims that Carrier rules forbid employees from taking company cell phones home.

The Organization refutes the Carrier’s defenses including that the tree removal was an emergent situation. The Organization maintains the Carrier produced no evidence of a genuine emergency.

For these reasons, the Organization asserts the claim must be sustained and that the appropriate remedy is four hours pay at the overtime rate.

The Carrier asserts that employees take company cell phones with them after hours to be available to take calls for overtime work. The Carrier argues that there are no restrictions and no Carrier rule on carrying of a company cell phone at all times. The Carrier says its employees are issued company cell phones so that they can be readily available for overtime calls. In this instance, the Carrier argues the Claimant decided not to keep his company cell phone with him and thereby chose to make himself unavailable for a call for overtime work. The Carrier asserts that it is not obligated to make multiple calls to find a particular employee.

The Carrier asserts that Meyer first called the Claimant to assign him the overtime work as required by Rule 15. When the Claimant failed to answer, Meyer moved on and assigned the overtime work to another employee in full compliance with Rule 15.

The Carrier also asserts this work was a temporary assignment and one incident on an “as needed” basis. As such, the Carrier argues, Rule 1, subpart 3. controls and not Rule 15.

The Carrier concludes the Organization has failed to prove a violation of the collective agreement and requests that the claim be denied.

This is a Rule 15 dispute of first impression and as such specifically refines employee obligations under the rule with regard to company cell phones.

The facts establish that Meyer complied with Rule 15 overtime work assignment requirements by first calling the Claimant, an employee “who regularly perform the work.

The call was made to the Claimant’s company cell phone. The Claimant did not answer because he had left the cell phone in his company truck. It is unreasonable and counterintuitive for the Claimant to volunteer for overtime work and agree to carry a company cell phone. It is unreasonable as well, when the employee leaves

behind the company cell phone in the company truck, only later to file a claim for overtime when the Carrier called the employee on the company cell phone but the employee did not answer. It is also unreasonable for the Organization and the Claimant to expect the Carrier to make multiple calls when an employee has volunteered for overtime work and agrees to carry a company cell phone.

The Carrier specifically denies that it forbids employees from carrying the company cell phone home or with them at all times. Furthermore, there is no proof of the Organization's assertion that the Carrier forbids employees from carrying company cell phones when not working. Since the Claimant chose to leave behind the company cell phone, he cannot later claim he was not properly called for the overtime assignment. The facts establish he was properly called. He cannot later claim that the Carrier must make multiple calls to offer him the overtime work when the collective agreement does not require multiple efforts to reach him.

For all these reasons, the Organization has failed to meet its burden of proof that the Carrier violated Rule 15 in this assignment of overtime work. The Board must deny the claim on the proven facts.

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 14th day of February 2018.