

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43013  
Docket No. MW-42226  
18-3-NRAB-00003-130188**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (former Missouri  
Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed to call and assign Gang 4161 employees K. Brantley, K. Allen and B. Collins to perform overtime service at Mile Post 27.18 on the Galveston Subdivision on October 30, 2011 and instead called four (4) junior employees from Gang 4161 (System File UP287WF-11/1564731 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. Brantley, K. Allen and B. Collins shall now each be compensated for ten (10) hours at their respective time and one-half 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.

This claim seeks 10 hours of overtime pay for each of the three named Claimants for work allegedly performed by junior employees on the same Gang (4161) on October 30, 2011 at a specific MP on the Galveston subdivision, asserting that the Claimants were not offered the overtime opportunity. In response to the claim, the Carrier asserted that it was procedurally defective due to its vagueness and uncertainty, and continually requested the identity of the four junior employees and the work performed. The Organization did not further identify either, stating that the Carrier should be able to ascertain the information from its records. The Carrier countered that the Organization was required to prove each and every allegation of its claim, and failed to meet its burden of proof, noting that the Claimants should be able to identify the 4 junior employees from the same gang, and pointing out that Claimant Collins did not displace onto Gang 4161 until October 31, 2011, so was not working on that gang on the claim date.

The Carrier argues that the claim was procedurally defective and vague, and that the Organization failed to meet its burden of proving each and every allegation of the claim, not providing the identity of the work or the junior employees of the same gang allegedly called for this overtime assignment, or even the fact that the Claimants were entitled to be called for the work and were not called. It notes that it is not the Carrier's responsibility to investigate and to substantiate a claim initiated by the Union, when the information is not readily identifiable, relying on Third Division Awards 26033, 27851 and 27895. The Carrier points out that one of the three named the Claimants was not even working on the gang at the time of the alleged violation.

The Organization asserts that the failure to call the Claimants and the assignment of overtime work to junior employees on the same gang violates the Claimants' established superior seniority rights in violation of Rules 1 and 29, relying on Third Division Awards 24480, 20310. It contends that the Carrier's arguments are disingenuous, as the claim identifies the location of the work, the date, the identity of the Claimants and the Rules violated, which is sufficient to meet its burden of proof, citing Third Division Awards 8121, 30283.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. Its claim seeks overtime payment on behalf of three Claimants, one of whom was shown not to be working on Gang 4161 on the claim date. Additionally, despite the Carrier's repeated requests on the property, the Organization failed to identify what overtime work was performed on October 30, 2011 and by which four junior employees of the Gang, making it impossible for the Organization to support its contention that the Claimants had a seniority right to that work, or that the Carrier violated any Agreement Rules. We also note that there were no written statements from the Claimants identifying their right to said work, availability, or the fact that they were not called to perform it. The vagueness of this claim, and the Organization's continued failure to identify the overtime work performed and the junior employees who allegedly performed it, undermines its ability to meet its burden of proving a violation of the Agreement in this case. See, e.g. Third Division Award 27895.

**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 29th day of March 2018.**