

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43019
Docket No. MW-42340
18-3-NRAB-00003-130327**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(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 offer and assign overtime service to Gang 9165 Machine Operator H. Demouchette in connection with assisting in changing oil and washing all roadway machines assigned to Gang 9165 on July 8, 2012 and instead assigned junior employee D. Rodriguez (System File UP512JF12/1573070 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant H. Demouchette shall now be compensated for fourteen (14) hours at his respective 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.

This claim seeks overtime pay for the Claimant, a Machine Operator on Gang 9165 working a T-1 compressed half in July, 2012. By agreement, the July 4th holiday was observed on the last day of the work period, July 8. On that day, it was determined that overtime service was necessary to perform the work of oil and filter changes and washing/cleaning of equipment. Junior Machine Operator Rodriguez was assigned to perform that work rather than the Claimant. In its correspondence on the property, the Carrier included a statement from Manager of Track Maintenance Rose, who stated that the employee utilized to perform the overtime service was the regularly scheduled employee performing such work. He indicated that such work is specific in nature, requires proficiency and experience, and is normally performed by the Off Duty DOT gang. MTM Rose disputed that the Claimant was as qualified to perform the work as the employee assigned.

The Organization asserts that the failure to assign the Claimant to the holiday overtime work violates his established seniority rights in violation of Rules 1, 2, 30 and the Scope Rule. It states that there is no regularly assigned employee to perform this work, and that the Claimant was qualified and had traditionally and historically performed oil and filter changes. The Carrier contends that the Organization has failed to meet its burden of proving a violation of the Agreement, noting that there was no written evidence presented that rebuts the statement of MTM Rose that Rodriguez was the regularly scheduled employee for this work. It points out that Rule 26(j) provides that overtime work is to be assigned to the regular employee, and not on the basis of seniority, citing Third Division Award 31294. The Carrier posits that this work assignment was made to the employee doing this type of work on a regular basis.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. The Organization offered no statement from the Claimant or other direct evidence to rebut the Manager's written assertion that the assignment was made to the employee who regularly performs this work, which requires some proficiency and skill, or that the Claimant

was not as qualified to perform it as Rodriguez. Assertions in correspondence are not the same as written evidence, and are insufficient to meet the Organization's burden of proving a violation of the Agreement in this case. The provisions of Rule 26(j) support the Carrier's work assignment in this case.

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 29th day of March 2018.