

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43034
Docket No. MW-42876
18-3-NRAB-00003-150113**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

PARTIES TO DISPUTE: (

(The Texas Mexican Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Track Laborer J. Herrera for overtime service (assist with the repair of a strip joint pull apart) in the vicinity of Mile Post 9.2 on the Laredo Subdivision, Laredo, Texas on January 5, 2014 and instead called and assigned junior Track Laborer R. Rodriguez (System File KCS929PA14/K0414-3763).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Herrera shall now be compensated for three (3) hours' pay at his respective time and one-half 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.

R. Rodriguez holds seniority in various classifications, including Machine Operator and Track Laborer. On the date this dispute arose (January 5, 2014), the Claimant was assigned as a Track Laborer and Rodriguez was assigned as a Machine Operator on Gang TM01 located on the Laredo Subdivision.

Rodriguez is junior to the Claimant in the Track Laborer classification. On January 5, 2014, overtime was necessary for repairing a strip joint located near Mile Post 9.2. The junior Rodriguez was assigned to perform three hours of overtime rather than the Claimant.

Putting issues of exclusivity aside, the record is not clear that the overtime work assigned was work that needed a Track Laborer or a Machine Operator. However, the Organization has the burden to establish all of the necessary elements of its claim. The Board does not have sufficient information concerning specifically what work was performed – i.e., whether it was Track Laborer or Machine Operator work. All we know is that the work consisted of repair to a strip joint, but we have no specifics. As such, we find that the Organization has not met its burden and 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 2nd day of May 2018.