

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43040  
Docket No. MW-43886  
18-3-NRAB-00003-160695**

**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: (**

**(Kansas City Southern Railway Company (former  
( former Gateway Western Railway Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when, on January 10, 2015, the Carrier assigned Welder Helper B. Johnson to work with Foreman R. Givens and perform overtime broken rail repair near Mile Post 265 on the Roadhouse Subdivision (System File C 15 01 10/K0415-5708 GAT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Boone shall ‘... be compensated eleven (11) hours at the time and one half rate of pay which totals \$457.55 for the Claimant plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.’”**

**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.

On Saturday, January 10, 2015, the Carrier called Foreman R. J. Givens from Gang 620 and Welder Helper B. Johnson from Gang 640 to fix a broken rail at MP 265 on the Roodhouse Sub near Pleasant Hill, Illinois resulting in overtime. At the time, the Claimant was assigned to Gang 620 as a Machine Operator and Givens was his foreman. The Organization asserts that the Claimant, rather than Johnson, should have been called for the work.

The Carrier defends the assignment of the work to Johnson rather than the Claimant asserting that an emergency existed and Johnson, who performed welding work which was necessary for the emergency work, was closer than was the Claimant to the mile marker where the broken rail occurred.

In emergency circumstances, the Carrier is given leeway with respect to assignment requirements. Putting aside any disputes over whether Johnson was senior to the Claimant for purposes of performing welding work or that the Claimant could perform that work, this record sufficiently shows that an emergency existed which therefore allowed the assignment made to the individual closer in proximity to the broken rail in order to meet that emergency. The record shows the individual closer to the broken rail was Johnson. The assignment of the emergency work to Johnson therefore did not violate the Agreement. The claim shall therefore be denied.

**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 2nd day of May 2018.**