

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43088
Docket No. MW-43762
18-3-NRAB-00003-160553**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to give Mr. R. Marasco preference for overtime service to change out a broken rail at Mile Post BJB 71.8 on December 24, 2014 and instead assigned junior employee C. McDonald (System File H43600415/2015-181144 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Marasco ‘... shall now be paid seven (7) hours of overtime at his overtime rate of pay and that all time be counted towards vacation and retirement for the Claimant. ***’”**

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 December 24, 2014 it was necessary to call an employee for overtime work to repair a broken rail. Employee C. McDonald was called and performed the work. The Claimant, who is senior to McDonald, asserts he should have been called instead.

The Carrier has not denied that the Claimant was the proper employee to call for this work ahead of McDonald. It asserts, however, that he was called and there was no answer. The Claimant, on the other hand, denies he was called and provided his phone records to document this fact. The Organization had asked the Carrier to provide its phone records to show that the Claimant was called. This documentation was not provided.

Based upon the record before the Board, we cannot find that the Claimant was called for the overtime assignment. Thus, we find that the Agreement was violated and the Claimant is entitled to the earnings he would have received had he been used to perform the work.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of May 2018.