

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43200  
Docket No. MW-42564  
18-3-NRAB-00003-140226**

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 offer and assign Machine Operator T. Anderson to perform rest day work operating Ballast Plow #BR9116 in connection with track surfacing work on March 29 and 30, 2013, and instead assigned employee W. Dussette, Jr. thereto (System File UP508JF13/1584251 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Anderson shall now be compensated for twenty-one (21) 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 21 hours of overtime pay for the Claimant due to the Carrier's decision not to assign him to the rest day overtime Machine Operator assignment on Gang 9483 on March 29 & 30, 2013, in favor of Machine Operator Dussette, Jr. At the time, the Claimant was regularly assigned as a Machine Operator on Gang 2229, and Dussette, Jr. on Gang 9483. Both gangs worked an alternative work week schedule consisting of four (4) ten hour days, Monday through Thursday. During the work week beginning March 25, Dussette was on vacation, and the Claimant was assigned to fill the resulting vacation relief position on Gang 9483 operating the Ballast Plow. He worked in that position from March 25 through 28. This dispute involves the overtime work of operating the Ballast Plow on Gang 9483 on Friday and Saturday, March 29 & 30.

The Organization asserts that, since the Claimant was assigned to the job of Ballast Plow operator on Gang 9483 during the regular assigned work days preceding the overtime, he was entitled to perform the mandated overtime associated with that work on March 29 & 30, under Rules 1, 2 and 29. It contends that Dussette, although bulletined to the position in that gang, was on vacation during the work week commencing March 25, which encompassed both the four work days and the three rest days, and that he was not due back to work from vacation until April 1, 2013. The Organization maintains that Dussette did not advise his supervisor that he would be available for overtime during his rest days after vacation. It relies on Third Division Awards 18295, 23198, 29097, and 40405 in support of its argument that the Claimant was the regular employee performing the disputed work at the time of the overtime assignment, and entitled to such assignment under Rule 26(i) and (j).

The Carrier argues that Dussette was the senior employee bulletined and regularly assigned to the gang and machine used in the overtime work in dispute, and that under Rule 26(j), he was entitled to the overtime assignment as the "regular employee." It points to the statement of its Manager explaining the reasons for the overtime assignment - Dussette's gang, bulletined position, machine, and over than 30 years more seniority than the Claimant - to support its position that its assignment was to the employee who did the work on a regular basis in compliance with Rule 26(j), citing Third Division Award 31294.

A careful review of the record convinces the Board that the Organization has met its burden of proof in this case. The bulletined employee (Dussette) was on vacation during the work week commencing on March 25, 2013. The Claimant

performed his assignment as vacation relief during the four work days of that work week (Monday through Thursday). The Friday and Saturday overtime was performing the same assignment, with the same gang, operating the same equipment. The facts support the conclusion that the overtime was a continuation of the work assignment performed by the Claimant during the preceding work days, and, as such, he was the “regular employee” who was entitled to that overtime assignment. See, e.g. Third Division Award 40405. As noted in Third Division Awards 18295 and 23198, an employee on vacation during a work week is not entitled to be called, nor can he be forced to be assigned, overtime until he returns to work from vacation. In the unique circumstances of this case, we conclude that the Organization sustained its burden of establishing a violation of the Agreement, and that the Claimant should be awarded the requested remedial relief.

**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 30th day of May 2018.