

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43337
Docket No. MW-44551
19-3-NRAB-00003-170714**

The Third Division consisted of the regular members and in addition Referee Mark L. Burdette when award was rendered.

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

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe R. Randall to perform overtime track repair work at Lewiston, Maine on June 18, 2016, on System Seniority Zone 4, instead of calling and assigning senior Trackman J. Wing thereto (Carrier's File MW-16-17 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Wing shall be compensated ' ... seven (7) hours and thirty-seven (37) minutes overtime at the Trackman Rate of \$23.88 for a total of \$272.95.”**

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.

Claimant J. Wing has established and holds seniority as a trackman in the Track Sub Department within the Carrier's Maintenance of Way Department.

On June 18, 2016, Supervisor Beaudry determined that a Track Sub-Department employee was needed to perform overtime track repair work in connection with a broken rail in a crossing at Lewiston, Maine, on System Seniority Zone 4.

Beaudry states that he attempted to call the Claimant (and others) and that there was no answer. Beaudry then called employee Robert Randall and told Mr. Randall that he tried to call everyone, and couldn't get a hold of anybody. Mr. Randall, working on a project in Waterville Yard at the time, agreed to help out since Mr. Beaudry was short-handed. Mr. Randall is a representative of the Organization. Mr. Beaudry's account is buttressed by the statement of Ken Pelletier, who was also contacted and involved in this event in the matter of another claim over the same event.

The Organization supplied the phone records of the Claimant in support of the claim that he was not called. However, the records provided are billing records and do not reflect declined or unanswered calls.

The Organization points out that the Carrier, in asserting an affirmative defense, has the burden to prove its defense, and that the statements of the management representatives are self-serving and not probative of the fact that the call was actually made. There are numerous prior awards cited from this and other Boards on both sides of that issue, and whether or not a single call is sufficient attempt to contact an employee.

There is no reason to disbelieve the statements of the two management representatives, supported by the testimony of the Organization official that he was told at the time that an attempt was made to contact the Claimant. Management has no reason not to award the overtime to the correct employee. Clearly the Carrier's position would be strengthened were there phone records or logs that documented the time and number of calls that were made, but the lack thereof is not fatal to the Carrier's position in this case.

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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 14th day of December 2018.