

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43427
Docket No. MW-42601
19-3-NRAB-00003-140312**

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

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

PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe M. Staats to perform overtime work (cleaning snow from switches) at various locations on the Omaha Subdivision on February 20, 21 and 22, 2013 instead of calling and assigning senior employe F. Schweiger thereto (System File G-1335U-13/1583994).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. Schweiger shall be ‘*** compensated for the twenty four (24) hours of overtime, for the lost opportunity to work, when the Carrier had junior employee Staats, perform the overtime work, at the applicable 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.

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This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The instant claim alleges the Carrier violated the Agreement by failing to assign the Claimant to perform overtime work on February 20, 21, and 22, 2013, and instead assigned said work to junior employee M. Staats.

On the dates in question, both the Claimant and Mr. Staats were assigned as sectionman truck operators headquartered at Council Bluffs, Iowa, with the Claimant holding more seniority than Mr. Staats. Although both employees were responsible for the same territory and same type of work, the Claimant was assigned to Gang 4751, while Mr. Staats was assigned to Gang 4753. On the dates in question, the Carrier was experiencing heavy snow fall on the Omaha Subdivision. Manager of Track Maintenance (MTM) S. Lauby decided to provide 24-hour coverage during the snow event and assigned Gang 4751 to day shift, and Gang 4753 to night shift. Gang 4751 worked 8 AM to 8 PM, while Gang 4753 worked 8 PM to 8 AM. During the three-day period, the Claimant accumulated 8.5 hours overtime, while Mr. Staats accumulated 24 hours overtime.

The Organization contends the Carrier violated Rule 26(h), which states:

“WORK ON UNASSIGNED DAYS - Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.”

The Organization argues a) the Claimant is the senior regular employee of the area, b) overtime has historically been assigned on a seniority basis and not on a gang by gang basis, and c) the mere fact that the Carrier scheduled the overtime in preparation for the approaching snow storm does not change the long-standing precedent for overtime distribution.

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The Carrier argues the Claimant's gang was assigned to day shift. Gang 4753, which included Mr. Staats, was assigned to night shift. Therefore, Mr. Staats and Gang 4753 were the regular employees assigned to perform the night work under Rule 26(h).

Both parties are citing Rule 26(h) as the basis for determining which employee was eligible for the overtime. The Carrier argues complying with Rule 26(h) because Mr. Staats was the regular employee assigned to perform the night work, while the Organization argues the Claimant was the senior regular employee in the area where the overtime snow removal occurred.

After thoroughly reviewing the record, the Board finds the Organization met its burden. In its submission, the Carrier indicates providing a detailed statement from MTM Lauby regarding the issue here. However, MTM Lauby's April 20, 2013 statement is void any detail, stating only "Mr Schweiger is on gang 4751 as a truck driver, Mr Staats is working on gang 4753 as a truck driver. Gang 4753 was the gang working on cleaning switch". Here, both the Claimant and Mr. Staats were paid straight-time for their normal first shift hours on February 20 – 22, 2013. The Claimant was paid straight-time for hours worked during his normal first shift hours, while Mr. Staats was paid straight-time for hours resting during his normal first shift hours. Although the Carrier argues Mr. Staats was assigned to night shift, the fact remains that he was paid straight-time for his normal day shift hours. In other words, both the Claimant and Mr. Staats were assigned day shift.

Without additional detail from MTM Lauby regarding the necessity to schedule the 24-hour snow removal coverage as he did, the Board finds the Claimant to be the regular employee under Rule 26(h). Had the Claimant worked the same hours as Mr. Staats during the three-day period of February 20 – 22, 2013, he would have accumulated an additional 15.5 hours overtime. As such, the Claimant is to be compensated for 15.5 hours overtime at the applicable rate.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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AWARD

Claim sustained in accordance with the Findings.

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 1st day of March 2019.