

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43429  
Docket No. MW-42715  
19-3-NRAB-00003-140421**

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 failed to properly bulletin and assign the position of foreman (Employee-in-Charge) of a Loram shoulder/ballast cleaner working on the Kearney Subdivision during April and May 2013 and when it assigned junior employees thereto instead of Mr. M. Legler who was senior and qualified (System File A-1335U-214/1587094).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Legler shall ‘\*\*\* be allowed one hundred fifty-four (154) hours of overtime compensation at his respective overtime rate (\$39.85) for the overtime hours worked by the junior temporarily assigned employees between May 9, 2012 (sic) and May 30, 2013. This equates to six thousand one hundred thirty-six and ninety cents (\$6136.90). This is compensation the Claimant would have received absent the violation of our Collective Bargaining Agreement.’”**

**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.**

**The instant claim alleges the Carrier failed to properly bulletin and assign the position of foreman of a Loram shoulder/ballast cleaner, working on the Kearney Subdivision during April and May 2013, when it assigned junior employees instead of the Claimant, who was senior and qualified. The Organization claims the Carrier violated Rule 20(a), which in relevant part states:**

**"Vacancies, including temporary vacancies as defined above, will be bulletined as promptly as possible but in no event later than seven (7) days after they occur; provided, however, that temporary vacancies, which start out on an indefinite basis, will be bulletined as soon as it is known they will exist for thirty (30) calendar days or more."**

**On April 10, 2013 and continuing through May 30, 2013, the Carrier assigned local employees to serve as foreman, or Employee-In-Charge, while a Loram Shoulder Cleaner was performing service on the Kearney subdivision tracks. Since the machine was on the track, there was a need to protect (flag) crossings and sections of track to ensure that trains, employees, and the public were safe when no signal was available. During the time period in question, the Carrier assigned four employees to perform the work, all of whom were junior to the Claimant. The Organization's claim alleges the Claimant was denied the opportunity to receive overtime compensation for work that was improperly assigned to junior employees.**

**The Organization argues Rule 20(a) required the Carrier to bulletin the position "as soon as it is known they will exist for thirty (30) calendar days or more." Here the position existed for fifty-one days, thereby violating Rule 20(a).**

The Carrier argues a) the Loram Shoulder cleaner was only scheduled to be performing work in the Kearney subdivision for 25 days, therefore a full-time position was not bulletined, b) no vacancy existed to warrant a bulletined position, c) flagging, the work in question here, can be performed by any qualified employee and was not exclusive to any specific craft or classification within a craft, d) the Organization failed to meet its burden, and e) the remedy sought by the Organization was improper and excessive, as the Claimant worked all of his regularly assigned hours during the time period in question, including overtime, and suffered no loss.

After careful review of the record, the Board finds the Organization met its burden. Rule 20(a) is clear. Although the Loram cleaner was only scheduled to remain in the subdivision for twenty-five days, it remained there for fifty-one days. Based upon the clear language of Rule 20(a), the Carrier knew or should have known that the position would exist for more than thirty days beginning on the thirtieth day and continuing thereafter.

Having determined the Carrier failed to comply with Rule 20(a), we now turn to remedy. The Board notes the typo in paragraph two of the Statement of Claim, recognizing that “May 9, 2012” is incorrect and is May 9, 2013. The Carrier argues the remedy is improper and excessive, as the Claimant worked all his assigned hours during the time period in question, including overtime, and therefore suffered no loss. Taking this into account, the Board finds the Claimant is to be compensated for the difference between his actual overtime earnings during the period of May 9, 2013 through May 30, 2013, and the overtime earnings he would have received had he been assigned the work provided to the junior employees during the same time period.

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.

### **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.**