

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43430
Docket No. MW-42760
19-3-NRAB-00003-140449**

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 assign Gang 9013 members R. Nez and P. Upshaw to perform overtime service (staging material, threading rail and welding for CWR) in the vicinity of Mile Post 129 on the Altoona Subdivision on June 7, 2013 and instead assigned junior employees T. Steinle and A. Wheatley thereto (System File D-1335U-302/1587923).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Nez and P. Upshaw shall now each “*** be allowed ten (10) hours if (sic) overtime compensation at their respective rate for the hours worked by the junior employees on the cited date, performing the cited duties. This equates to three hundred seventy nine (\$379) dollars. ***”**

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 Claimants, as well as employees Steinle and Wheatley, were assigned to Gang 9103 and were working a T-2 schedule. Both Claimants held more seniority than either Mr. Steinle or Mr. Wheatley. June 7, 2013 was an assigned rest day for the Gang, but the Carrier required overtime service on that day in order to stage material for upcoming work. Pursuant to the Carrier's needs, Mr. Steinle and Mr. Wheatley each performed 10 hours of overtime on June 7, 2013.

The Organization argues the Carrier violated the Agreement when it failed to offer the June 7, 2013 overtime to the Claimants. The Claimants were senior to Mr. Steinle and Mr. Wheatley, were fully qualified, and readily available for the work. The Carrier's actions in denying the Claimants' overtime work improperly deprived them of an overtime work opportunity. The Organization provided statements from the Claimants indicating that though they were present during the job briefing when the alleged offer of overtime was made, they maintained that no such offering occurred during the morning briefing.

The Carrier argues the Claimants were available and present when the overtime was offered, but neither Claimant volunteered for the offered overtime. The Carrier provided statements from Track Supervisor William Allen and Track Supervisor Kenny Saunders indicating the Claimants failed to volunteer for the offered overtime.

In reviewing the evidence, the Board notes that Supervisor Allen's initial statement, which was provided early in the processing of the claim, as well as his second statement, were both based upon his discussion with Supervisor Saunders. Supervisor Allen never supervised the Gang. Supervisor Saunders was the supervisor for the Gang at the time of incident. After the party's discussion at conference but before the claim was docketed, the Carrier provided the Organization with a written statement from

Supervisor Saunders. In his statement, Supervisor Saunders indicates that neither Claimant volunteered for the overtime.

Considering the statements provided by the Claimants as well as the statement provided by Supervisor Saunders, the Board is left with an irreconcilable dispute in fact. This Board has held on numerous occasions that where there is a genuine dispute of facts, it falls to the moving party to provide sufficient evidence to convince the Board of its version of events. Here, the evidence failed to meet that burden. As such, the Board has no choice but to dismiss the claim.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim dismissed.

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 1st day of March 2019.