

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43471  
Docket No. MW-43901  
19-3-NRAB-00003-160728**

**The Third Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to call or assign Claimant E. Herring to perform overtime duties between Mile Posts 00H276.5 and 00H280.8 on the Nashville Division on December 18, 2014 and instead assigned such work to employee R. Tankersley (System File I56700215/2015-181017 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Herring shall ‘... be allowed fifteen and one half (15.5) hours overtime, 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 case involves the Organization's claim filed on behalf of Surfacing Foreman E. Herring for 15 ½ hours of overtime, based on the contention that the Carrier violated the Agreement when it failed to call and assign the Claimant to perform the March 10, 2015 overtime service on Surface Gang N35 on December 18, 2015 and instead called and assigned junior employee R. Tankersley to perform the overtime work in question.

In the Division Engineer's March 10, 2015 declination of the claim he attached a statement from Roadmaster Joshua Smith stating "I called Mr. Herring on said date before calling Mr. Tankersley" as the reason why Mr. Herring was not used for the overtime. On the Organization's rebuttal dated April 4, 2016 it provided a statement from the Claimant stating that he was never called on December 19, 2014, however, the claim date is December 18, 2014. Claimant's statement also stated that his supervisor Mr. Smith did say that he (Mr. Smith) called him on the date that was worked, which was December 18, 2014. Ultimately, there is an irreconcilable conflict in the record as to whether or not the Claimant was offered the overtime in question, and accordingly in the narrow context of this particular record we must dismiss this claim.

**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.