

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43473
Docket No. MW-43944
19-3-NRAB-00003-160750**

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 assigned outside forces (Railroad Construction) to perform Maintenance of Way work (shovel and sweep switches) at various locations in the Wood Burne Yard in Langhorne, Pennsylvania on February 15, 2015 instead of calling and assigning Mr. R. Bates thereto (System File R Bates001/2015-184831 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Bates shall now be compensated for ‘... twenty four (24) hours at the applicable overtime rate, including credits and benefits....’”**

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.

On February 15, 2015 a contractor was called to remove snow from tracks and switches. It is conceded by the Carrier that the work involved was an overtime opportunity but that prior to any contractor being called to perform the work the Claimant was called. Roadmaster Daniels stated in part in an e-mail that the Claimant did not answer the phone or call back. The Claimant denies he was called and provided his phone records to document his position. The Organization requested the Carrier to produce records to prove the call was made and the Carrier failed to do so.

Based on the record before this Board, we cannot find that the Claimant was called for the overtime assignment. We find that the Agreement was violated, and that the Claimant is entitled to what he would have earned if he had been properly called for the overtime work in question.

AWARD

Claim sustained.

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.