

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43512
Docket No. MW-44590
19-3-NRAB-00003-180014**

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

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

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Mr. A. Bentley to perform overtime work on May 22, 23 and 24, 2016 in the vicinity of Sabula, Iowa instead of assigning Work Equipment Mechanic S. Pattison thereto (System File B-1615D-201/8-107 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Pattison shall now receive seventeen and one-quarter (17.25) hours' pay at the applicable overtime rate.”**

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 May 22, 2016, a derailment occurred at Sabula IA. Claimant was assigned as a work equipment mechanic working in mobile service in the vicinity of Sabula IA. The derailment required the services of a work equipment mechanic. Carrier did not call Claimant but instead called the employee claimed against. Claimant holds seniority.

By letter dated July 7, 2016, the Organization filed a claim on behalf of the Claimant alleging that the Carrier improperly called a junior employee to perform work equipment mechanic duties, and the same was denied by letter dated August 29, 2016 which indicated exigent circumstances, an impassable track caused by a derailment. By letter dated October 7, 2016, the Organization appealed the claim to the highest designated officer, and the same was denied by letter dated December 5, 2016. A formal conference was held on June 8, 2016 with no change in the position of the Carrier. This matter is before this Board for a final resolution of the claim.

The Carrier contends that no violation of the agreement has occurred. The Organization has failed to meet its burden of proof that the actions of the Carrier violate the relevant provisions of the Agreement. The Carrier asserts that Rule 19, is not applicable because this is neither assigned nor advertised work. Rule 15 which states that overtime will be distributed first to the employees who regularly perform the work and thereafter...to all employees..., is not applicable due to the emergency circumstances, an interruption to train service. Rule 1 states that emergency services may be performed as determined by the company and that other employees may perform work on an as needed temporary basis. No positions were abolished. Lastly, it is the position of the Carrier that the claim should be denied or dismissed in its entirety.

The Organization contends that Claimant should have been allowed overtime work opportunities ahead of the employee claimed against. The Organization argues that duties are assigned by seniority. Employees who maintain seniority and regularly perform such duties are entitled to such duties ahead of all others. Claimant seeks compensation for seventeen and one quarter (17.25) hours at the overtime rate. The Organization contends that although a derailment occurred, the junior employee as a

direct responder to the derailment. The duties under claim are not directly involved in derailment duties, and that there was no immediate need for a work equipment mechanic at the derailment site. Both Claimant and the junior employee were in the vicinity and the proper call could and should have been made in accordance with the agreement. The Organization further contends the Carrier has failed to afford Claimant the opportunity for work and compensation by violating the January 1, 2013 Agreement including but not limited to Rules 1;2;4;6;9;10; and 15. Lastly, it is the position of the Organization that the claim be sustained in its entirety.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and finds that emergency existed, a derailment which rendered portions of the Carrier's track impassable. The junior employee was performing work as needed on a temporary basis in an emergency situation to make the track passable. Rule 1 permits the Carrier to call such employees as the Carrier sees fit. The Board finds no contract violation.

AWARD

Claim denied.

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 27th day of March 2019.