

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43531
Docket No. MW-42791
19-3-NRAB-00003-140498**

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

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

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Missouri
Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign senior employees D. Williams, R. Dixon and D. Walls to perform overtime track repair work at a derailment in the Riverfront Yard at Mile Post 450.29 on July 18, 2013 and crossing repair work at the Gould road crossing at Mile Post 322.40 on the Reisor subdivision on July 24, 2013 and instead assigned junior employees R. Jeffrey, Jr., T. Young and F. Smith, Jr. thereto (System File UP611BT13/ 1591154 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Williams, R. Dixon and D. Walls shall each ‘... be paid twenty-three (23) hours overtime, at a rate of one and one half times per hour and five (5) hours of double time at a rate of two (2) times per hour each.’”**

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 D. Williams, R. Dixon, and D. Walls have established and maintain seniority within various classifications and positions of the Carrier's Track Sub-Department. On the dates in question, the Claimants were all regularly assigned and scheduled as part of a multiple work group to their respective positions on Gang 9185. Multiple work gangs were all performing track structure work within the same vicinity and under the direction of Supervisor J. Hicks.

It is undisputed that on July 18, 2014, the Carrier experienced a derailment at MP 450.29 in the Shreveport Subdivision. The work of repair and clean up was initially assigned to two gangs and expanded to other gangs. The work of restoring service began on the evening of July 18 and continued to the next day. With respect to how employees were called, Supervisor Hicks wrote,

"The two gangs that worked are different gangs than what the three employees work on. The first two gangs worked the derailment that evening and night these employees worked on the derailment the next day with about four other gangs. The employees that filed the claim work on gang 9185 the other employees work on gangs 1350 and 1353 all separate gangs."

The Organization also alleged that on July 24, 2013, the Carrier assigned junior employees to perform overtime work of repairing Gould Road Crossing at Mile Post 322.40 on the Reisor Subdivision.

The Organization filed a claim on September 5, 2013, stating that the Claimants should have been allowed to work overtime resulting from the July 18 derailment, rather than the employees who were called out. The Carrier denied the claim on the basis that the derailment created an emergency. The claim was further processed on property, but the parties were unable to resolve it.

The Organization contends that the Claimants were entitled to the overtime assignments, but that the Carrier failed to make any attempt to assign the Claimants to the overtime work. The Organization contends that the Claimants were entitled to the benefits of their seniority, one of the most important cornerstones of the collective bargaining agreement. The Organization contends that the Carrier failed to produce credible evidence that an emergency existed, so it has failed to prove its affirmative defense. The Organization contends that the Carrier's defense that it called out gangs, not individuals, has no merit because the work was not in connection with any specific gang work, or incidental to any gang assignment. Finally, the Organization contends that the Claimants are entitled to the requested remedy.

The Carrier contends that the work in question was caused by a derailment that created an emergency, and that it has greater latitude when faced with an emergency to assign overtime other than by seniority. The Carrier contends that the Supervisor called out employees by gangs to work the derailment, and not by individuals in seniority order. The Carrier contends the derailment stops trains until the employees make the repairs, and there is no dispute that a derailment occurred. The Carrier contends that the Organization has failed to offer any probative evidence regarding the claim for July 24.

There is no doubt that seniority is a valuable property right earned by employees, which must be respected by the employer. Third Division Award 24480; First Division Award 15128. Where the Claimants have shown that they were more senior to the employees who were called to work the overtime on July 18, they were entitled to the work, unless the Agreement permits the Carrier to assign others. If the Carrier can demonstrate that an emergency existed, it has greater latitude in calling employees for repair work. Third Division Award 20310.

The Carrier bears the burden of proving that an emergency existed. This Board has defined an emergency as "an unforeseen combination of circumstances that calls for immediate action." Third Division Award 20527; Third Division Award 10965. This Board has also suggested that an event which is neither sudden nor unforeseeable, such as a heavy snowstorm, is not an emergency that would permit bypassing senior employees. Third Division Award 29164. Similarly, a broken rail was found not to have created an emergency. Third Division Award 35590.

The Carrier presented a statement from Supervisor Hicks that after the derailment occurred, the restoration continued through the night on July 18 and into

the next day. In Second Division Award 8093, the Board stated that a “derailment prima facie presents an emergency situation.” In Third Division Award 29859, this Board agreed that a derailment would necessitate immediate action and that the Carrier was entitled to use those employees who were most readily available. The Organization has not presented sufficient evidence to rebut the Carrier’s assertion that the derailment caused an emergency which provided the Carrier wider latitude in calling out employees to restore service.

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.