

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43537
Docket No. MW-43002
19-3-NRAB-00003-150170**

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 to assign senior employees C. McFarlane and J. Dahlgren to perform overtime track maintenance and repair work at various locations within the Davidson Yard in Fort Worth, Texas on the Dallas Subdivision and on the siding between Mile Posts 562 and 565 on the Duncan Subdivision in the vicinity of Chico, Texas on November 24, 2013 and instead assigned Track Inspector A. Duffield thereto (System File UP920PA13/1596685 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. McFarlane and J. Dahlgren shall each be compensated for fourteen and one-half (14.5) hours at their respective time and one-half rates 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.

The Claimants have established and maintain seniority within various classifications and positions of the Carrier's Maintenance of Way Department. On November 24, 2013, Track Inspector A. Duffield made repairs to a switch and fixed a broken rail. The Organization alleged that Track Inspector Duffield also put out smudge pots.

The Organization filed a claim on December 11, 2013, contending that the Claimants were not offered or assigned overtime work performed by a non-Agreement Track Inspector. The Carrier denied the claim on the basis that the Organization failed to show that the work had occurred as alleged or at all, and on the basis that any work performed was minor and incidental to Duffield's duties as a Track Inspector. The parties were unable to resolve the claim on property, so it is now properly before this Board for final adjudication.

The Organization contends that a non-Agreement employee was assigned to perform track maintenance and repair overtime work on November 24, 2013. The Organization contends that the Claimants were the senior employees under the Agreement. The Organization contends that making repairs to Switch #11, repairing a broken rail on Track #304 in the Dallas subdivision, and putting out smudge pots between MP 562 and 565 on the Duncan Subdivision was Maintenance of Way work.

The Carrier contends that the Agreement is not violated when a track inspector makes minor repairs that are incidental to his regular assignment. The Carrier further contends that the inspector never performed work related to smudge pots. The Carrier contends that a fundamental conflict of facts means that the claim must be denied.

The Carrier submitted a statement from Duffield regarding the work that he performed. Duffield stated that he was called about the #11 switch and that the signal man and he adjusted the switch due to it "gapping under load." Duffield also stated that

he made a temporary repair to a broken rail in 301 track and then instructed that the rail should be crossed at walking speed until it was repaired. Duffield denied performing any work related to smudge pots.

This Board is required to resolve disputes based on the evidence in the record. Further, the Organization bears the burden of proving specific facts in support of its claim. Where the record contains irreconcilable dispute of material facts, the Organization's claim must fail. In this record, the Organization claims that the Track Inspector placed smudge pots, which he denied. This Board has no way of resolving that factual dispute.

With respect to the claim for the work of making repairs to Switch #11 and repairing a broken rail on Track #304, the Carrier presented evidence that only minor repairs were made in the course of Duffield's track inspection duties. The Organization has not demonstrated that the duties he performed were not incidental to his job as Track Inspector.

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.