

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43538  
Docket No. MW-43003  
19-3-NRAB-00003-150171**

**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 assigned junior employe A. Arredondo to perform extra work (replacing and repairing track components) on the Kansas City Terminal Seniority Division, Coffeyville Subdivision between Mile Posts 326.5 and 292.0 on October 31, November 1 and 4, 2013 instead of allowing senior employe J. Cramer to perform such extra service (System File UP308LF13/1597061 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Cramer shall now ‘... be paid for all hours pay (straight and overtime. [sic] as well as credits and benefits flowing there from) described herein.’”**

**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 Claimant holds seniority in the Carrier's Track Sub-department on the Carrier's Kansas City Terminal Seniority Division. On October 31, 2013, Claimant was displaced from his trackman position on Gang 1631. According to the Claimant's statement, he asked if he could work extra and was told there was no extra work. Manager Vedder's statement acknowledges that the Claimant asked to work extra, but further provides that the Claimant's request was limited to work in Kansas City. There is no dispute that during the time the Claimant was furloughed, junior employee A. Arrendondo was working extra in Paola, Kansas.**

**The Organization contends that the Carrier was obligated to inform the Claimant that he was entitled to displace a junior employee during the claim period. The Organization contends that it is incumbent on the Carrier to provide its employees with accurate information relative to their seniority rights. The Organization contends that the Claimant's right to the position occupied by the junior employee was demonstrated by his successful displacement of the employee on November 5, 2013.**

**The Carrier contends that it has never denied that the Claimant had the right to displace the junior employee. The Carrier contends that the Claimant only asked Manager Vedder about extra work in Kansas City, of which there was none. The Carrier contends that the Claimant chose not to displace the junior employee in Paola, Kansas for unknown reasons. The Carrier contends that it has provided all employees, including the Claimant, with resources to identify all junior employees who are working when extra work is sought.**

**The record demonstrates that there is a dispute in fact as to whether the Claimant's inquiry was limited to extra work in Kansas City. However, this disputed fact is not material, as the Claimant had other resources available to him to determine where junior employees were working. The Carrier took no action to prevent the Claimant from displacing any junior employee. The record is clear that the Claimant**

**was placed in the position once he requested to displace Arrendondo and that he could have done so earlier, without interference from the Carrier. The Board finds that the Organization has failed to demonstrate that the Agreement was violated.**

**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.**