

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43546  
Docket No. MW-43094  
19-3-NRAB-00003-150293**

**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, despite being regularly assigned to the six (6) ton truck operator position, the Carrier failed to assign Mr. J. Foley to operate said vehicle on March 3 and 4, 2014 and to perform overtime work delivering materials from Fort Worth, Texas to El Paso, Texas and instead assigned junior Truck Operator I. Sandoval thereto (System File UP947PA14/1605144 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Foley shall be allowed four and one-half (4.5) hours' pay at his respective time and one-half rate and he shall be allowed his daily per diem allowance.”**

**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 established and holds seniority within the Carrier's Maintenance of Way Department. On January 13, 2014, the Claimant exercised his seniority and displaced 6 TN Truck Operator I. Sandoval on Gang 9141. Sandoval remained on the gang because there was an additional open position on the work group. Sandoval continued to operate the 6 TN Truck while the Claimant remained in the yard loading trucks. While driving the 6 TN truck, on March 3 and 4, 2014, Sandoval performed 4.5 hours of overtime track service.**

**The Organization filed a claim on May 2, 2014, asserting that the Claimant, as the senior employee, should have been offered and assigned to perform the truck operator overtime service. The Carrier denied the claim on May 28, 2014, stating that the Claimant had advised Manager Daniels that he did not want to perform truck driving duties. The claim was further processed on-property, but the parties were unable to reach resolution. It is now properly before this Board for final adjudication.**

**The Organization contends that the Claimant had displaced Sandoval as a truck operator of a 6 TN truck on Gang 9141, and he was, therefore, the regular employee to whom the overtime work should have accrued.**

**The Carrier contends that the work was properly assigned. The Carrier contends that the Claimant is one of ten employees who work in this location and they all perform the same type of work. The Carrier contends that all ten employees are truck drivers, but some perform yard work and some drive the trucks, without regard to seniority. The Carrier contends that on the days in question, Sandoval was assigned to drive a truck, so he continued to perform those same duties after his regular shift and into overtime.**

**Rule 26(j) provides,**

**“(j) WORK ON UNASSIGNED DAYS. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will**

otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.”

Therefore, if Sandoval was properly assigned to perform this work, he was entitled to the overtime work as the regular employee. The Carrier submitted a statement from Manager of Track Maintenance Jonathon Phillips,

“The claim states that employee Foley displaced employee Sandoval on January 13, 2014. After reviewing the work history, employee Sandoval caught a bid on January 31, 2014. Effective February 1, 2014 both employees were assigned 6 ton truck operators. On the particular days in question, specifically March 3 and March 4, 2014, both employees worked 8 hours straight time as 6 ton truck operators. Employee Sandoval’s overtime flowed from the work performed on straight time. Employee Sandoval was unloading material in El Paso, TX while employee Foley was working in the yard in Fort Worth. Due to the fact the overtime flowed from straight time, employee Foley is not entitled to the overtime work performed by employee Sandoval.”

The Carrier has the right to make assignments among the ten truck drivers on Gang 9141, including assigning the Claimant to unloading trucks in the yard. After careful review of the record, this Board concludes that the Organization has failed to establish a violation of 26(j) of the Agreement.

**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.