

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43574  
Docket No. MW-42343  
19-3-NRAB-00003-180461  
NRAB-00003-130331**

**The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (former Chicago  
and North Western Transportation Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to assign Mr. T. Friedl to perform overtime duties with an EC-5 track inspection car on May 23 and 24, 2012 and instead assigned junior employe D. Rodriguez (System File B-1231C-112/1572093 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Friedl shall now be compensated for ten and one-half (10.5) hours at his applicable overtime rate 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.**

This case concerns the Organization's contention that, on May 23 and 24, 2012, the Carrier assigned overtime on an EC-5 track inspection car to D.M. Rodriguez, a Junior Track Inspector, rather than Claimant, the regularly assigned Senior Track Inspector for the territory at issue.

In support of this claim, the Organization provided a handwritten statement by another employee stating that, on May 23, 2012, he observed Mr. Rodriguez working with the EC-5 car, and that Mr. Rodriguez stayed for overtime work when the rest of the employees were sent home. The Carrier, however, provided a statement from Manager Shoemaker that Mr. Rodriguez did not perform the work at issue on May 23 and 24, 2012 but was, at the relevant times, driving to or from his shift start and tie up locations.

Given these conflicting accounts, the record presents us with an irreconcilable dispute as to the facts underlying the claim. As stated in Third Division Award 33416, see also Third Division Award 37204, the Board functions as an appellate body and does not take testimony, evaluate witness testimony or resolve factual disputes such as the one before us. Therefore, the Organization has failed to meet its burden of proof and we must deny the claim.

**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.