

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43575
Docket No. MW-42346
19-3-NRAB-00003-180462
NRAB-0003-130336**

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 offer and assign Mr. B. Helgeson to overtime service on May 4, 2012 and instead assigned junior employee A. Lankford (System File B-1231C-113/1572528 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Helgeson shall now be compensated for eight and one-half 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 arises from the Organization's contention that the Carrier failed to extend a planned overtime work opportunity to Claimant for eight and one-half hours of overtime work on May 4, 2012, and instead allowed junior employee Adam Lankford to perform the work. The Carrier maintained that it offered the work to Claimant and he denied the opportunity.

The record includes an e-mail statement from Carrier Supervisor Bryan Bucklin, which provided, in its entirety, "Employee Brad Helgeson #0228377 was asked to work, declined due to Friday work only. Decision was made to Foreman and Asst. Foreman to work. Adam Lankford #0437266 was the truck driver- Asst. Foreman."

The record also includes detailed handwritten, signed statements from employee David Jaegers and Claimant. They recount that during the week before the day at issue, Supervisor Bucklin was looking a senior employee to work with the structural iron workers to assist in pile driving. Claimant volunteered but was not awarded the work Mr. Jaegers, a senior employee, volunteered. Mr. Jaeger's statement recites that when he arrived at the work location on May 4, 2012, he observed that Mr. Lankford, who was junior to Claimant, arrived at the work site about the same time he did, and was allowed to work overtime.

The Carrier asserts that these conflicting accounts present the Board with a dispute of fact, which requires that we deny the claim. We disagree. The Organization has presented much more comprehensive and detailed accounts than the Carrier, and they establish, as asserted in the claim, that the Carrier denied Claimant a work opportunity and afforded it to a junior employee. The claim will therefore be sustained.

AWARD

Claim sustained.

Form 1
Page 3

Award No. 43575
Docket No. MW-42346
19-3-NRAB-00003-180462
NRAB-0003-130336

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of March 2019.