

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43960  
Docket No. MW-43143  
20-3-NRAB-00003-190393**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it called and assigned the Reno Section Gang to perform cold weather track protection work on the Blackhills, Orin and Campbell Subdivisions on February 4 and 5, 2014 instead of calling and assigning Messrs R. Lauer, V. Dabney, G. Prosenick and K. Delgado of the Gillette Section Gang thereto (System File C-14-0020-12/10-14-0215 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Lauer, V. Dabney, G. Prosenick and K. Delgado shall each be compensated for eleven and one-half (11.5) hours at their respective overtime 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.

On February 4 and 5, 2014, cold protection was needed on tracks located on the Blackhills, Orin and/or Campbell Subdivisions, within the boundaries of the Gillette, Wyoming section crew. Claimants regularly performed their assigned duties within this area, yet the Carrier opted to call a Reno, Wyoming section crew junior foreman Brickett and the members of his section crew to perform the work. The Organization alleges this was in violation of Rules 1, 2, 5 and 29.

The Carrier denies that any rules require the assignment the Organization advocates. Further, it notes that shortly before the claimed work occurred, Roadmaster Hoyle spoke with Claimant Lauer, who told Hoyle that he could not work nights or take call outs at night due to being a single parent. Thus, the next senior Section foreman was called.

We find that in advising Hoyle of his unavailability, the Claimant relinquished any right to the assignment in question. Hoyle acted in accordance with the information he was given and did not breach the parties' Agreement when he did so.

**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 5th day of March 2020.