

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43996  
Docket No. MW-45319  
20-3-NRAB-00003-190145**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(Dakota, Minnesota & Eastern Railroad Corporation**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned junior employee B. Shifflet to perform overtime work operating a material truck on July 19, 20, and 21, 2017 instead of calling and assigning senior Material Truck Operator J. Manthe thereto (System File B-1715D-204/USA-BMWED\_DM&E-2017-00126 DME).**
- (2) As a consequence of the violation referred to in Part (1) above. Claimant J. Manthe shall now each ‘\*\*\* be compensated for all man/hours of overtime and double time rate, as stated earlier in the claim, at the applicable rates of pay,’ (Emphasis in original).”**

**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 incident giving rise to this claim occurred on July 19, 20, and 21, 2017. On those dates the Carrier assigned an employee junior to Claimant J. Manthe to perform overtime work operating a Material Handling Truck (MHT) in lieu of Claimant. The overtime work was located in the vicinity of the Waseca, Tracy and Owatonna Subdivisions.

The Organization filed a claim on Mr. Manthe's behalf on September 13, 2017. That claim was denied by the Carrier on November 3, 2017. The denial was appealed by the Organization on December 13, 2017, and the Carrier denied that appeal on February 9, 2018. The matter was progressed in accordance with the Parties Agreement and is properly before this Board.

The Organization maintains that the Claimant was the senior available employee who should have been assigned the overtime hours. It notes that Claimant regularly performed the work of material truck operator as part of his normal assignment of duties; he was therefore the senior regularly assigned Material Handling Truck Operator on the territory involved. The Organization notes that the Claimant performed none of the overtime and/or double time to which he was entitled because of this mis-assignment of material truck operation and asks that he be made whole for the amount of pay he was erroneously denied.

The Carrier protests that the Claimant had volunteered to work an open position of Machine operator running a 6700 tamper during the time in dispute. At the time, B. Shifflet (the junior employee at issue) was then tasked to operate the MHT in lieu of the Claimant. Therefore, the Carrier maintains, while the Claimant would have been the employee eligible for overtime, if any, on the 6700 tamper, by his own choice he was not the employee entitled to the overtime on the MHT during the period in question. Rather Mr. Shifflet was the employee "Regularly performing the work" of MHT operator, and was, according to Rule 15—Overtime the employee properly assigned the overtime work.

The Board has reviewed the documentary evidence in this case with care. Contrary to the Carrier's position that the Claimant volunteered to run the 6700 tamper, the bulk of the evidence indicates that he was in fact directed by Carrier management to run it, but it clearly was not his regularly assigned position. The Claimant's regular assigned position was as the MHT operator on the territory in question, and, in that case, he would have been entitled to the overtime and/or double time associated with the work erroneously assigned to junior employee Shifflet.

Accordingly, the Board finds that the Carrier and the Organization shall make a joint inspection of the work records for the dates at issue and calculate the amount of overtime and/or double time the Claimant should rightly have received. That amount shall be remitted to him upon agreement between the Parties as to the amount of moneys owed.

Claim sustained only to the extent set forth in the above Findings.

**AWARD**

Claim sustained in accordance with the Findings.

**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 5th day of March 2020.**