

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44010
Docket No. MW-45513
20-3-NRAB-00003-190335**

The Third Division consisted of the regular members and in addition Referee Keith D. Greenberg when the award was rendered.

**(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe R. Hawkins, Jr. to perform overtime work (plowing snow) with a bucket loader in the Waterville Yard on January 18 and 19, 2018 instead of calling and assigning Maintenance Crew #3643 members M. Garner and R. Principato thereto (Carrier’s File MW-18-19 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Garner and R. Principato shall now each be compensated for eight (8) hours at their respective overtime rates of pay as set forth within our initial letter of claim.”**

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 matter involves the Waterville Maintenance Crew #3643 headquartered in Waterville, Maine.

On February 12, 2018, the Organization filed a claim that alleged a violation of Article 10.4(c) of the Agreement. The claim stated, in relevant part, that:

“On Thursday, January 18, 2018, Mr. Hawkins Jr. was assigned by Carrier Supervisor Jason Beaudry to plow snow in the Waterville Yard beginning on the (night) shift hours of 1900 to 0300. Messrs. Garner and Principato are the respective Foreman and EO (Bkt. Ldr.) of Waterville Maintenance Crew (#3643), who are entitled to any planned overtime for Waterville Yard work.

Mr. Hawkins Jr. former position, Trackman on the Maintenance Crew (#3643), headquartered out of Waterville, ME was abolished at the close of work on Wednesday, January 17, 2018. Mr. Hawkins Jr. exercised his seniority to bump the new Trackman position on BIDS-AB-20182 to be covered on Monday, January 22, 2018. Between Wednesday, January 17, 2018 at 1500 hours and Monday, January 22, 2018 at 1900 hours, Mr. Hawkins Jr. would not have been eligible for any work opportunities given the fact that he had not been assigned to any position through the exercise of seniority UNTIL the effective date of his assuming the assignment of the Trackman position outlined on BIDS-AB-2018.

....

The Organization finds that the Carrier violated Article 10. Overtime, specifically Article 10.4 (c) of the Parties Agreement.”

(Spelling and emphasis as in original.)

By letter dated April 13, 2018, the Carrier denied the claim, responding in relevant part that:

“An email from me had been sent out on Monday, January 15, 2018, before the Awards on January 17, 2018, stating, in short, that the night crews posted at several Headquarter points would not be covered, as no Foremen had requested to cover the positions. The intent of this being that the railroad could not have Trackmen report to their Headquarter points without a Foreman or Supervisor available to instruct them or their duties.

Bids were processed and awarded on Wednesday, January 17, 2018, with most of the Night Foreman positions being awarded, one of which being the Waterville Crew #3646. Mr. Hawkins’ position as Trackman on Maintenance Crew #3643 was abolished as of the close of work on Wednesday, January 17, 2018. As a result, he exercised his bumping rights to the Trackman position on the Night Maintenance Crew #3646 effective January 18, 2018. The need for snow removal arose and Mr. Hawkins was asked by Supervisor Jason Beaudry to come in to clear snow and keep the Yard operational because it was Mr. Hawkins’ position, regardless of my email which was sent before any of the Night Crews had Foremen.”

(Spelling as in original.) The claim was discussed by the Parties in conference on July 25, 2018.

The Organization, in its submission, points out that “that the claim on behalf of Foreman Garner was dropped by the Organization during the handling on the property. Thus, this dispute only concerns the equipment operator work claimed on behalf of Claimant Principato in connection with junior Employee Hawkins’ operation of the bucket loader to remove snow.” The dispute before the Board is therefore limited to the claim of Claimant Principato.

It is undisputed that the work involved in this matter involved the operation of a Bucket Loader to remove snow, which the Carrier assigned to Mr. Hawkins to perform on regular hours on January 18, 2018. It is also undisputed that the Claimant Principato is senior to Mr. Hawkins as an Equipment Operator, that the Claimant Principato was regularly assigned as an Equipment Operator operating the Bucket

Loader as part of his regular assignment, and that Mr. Hawkins was regularly assigned as a Trackman and did not typically operator Bucket Loaders.

The Organization maintains that the Claimant Principato had a superior right to perform the claimed work as the regularly assigned employee and because he was the senior Equipment Operator. The Organization contends that only Equipment Operators may operate Bucket Loaders for purposes of, among other things, the removal of snow. The Organization asserts that the Claimant Principato was the senior employee at Waterville, Maine holding a position as an Equipment Operator while Mr. Hawkins, by contrast, had bid into and was awarded a Trackman position and was permitted by the Carrier to fill that position earlier than the specified effective date.

The Carrier maintains that the scope of work at issue in this dispute relates specifically to snow removal, which the Parties understand is work as to which no one craft or class of employee has ownership; the Carrier refers the Board to documentation contained in the Parties' submissions reflecting that understanding. The Carrier asserts that, on this property, any available employees, including Trackmen, are called upon to perform various kinds of snow removal, including that at issue here. The Carrier contends that the fact that Mr. Hawkins used a particular Carrier-owned tool – the Bucket Loader – to perform work that is properly assigned to Trackmen does not violate the Agreement, as it is the scope of work, rather than the particular tools used to perform that work, that is protected by the Agreement. See Public Law Board 5606, Award No. 54. The Carrier further notes that Mr. Hawkins performed the snow removal work at issue here on regular hours, and that there is nothing in the Agreement that would require the Carrier to call in the Claimant, on overtime hours, to perform work that Mr. Hawkins is qualified, available, and contractually permitted to perform on his regular hours. It is noted that Mr. Hawkins had been awarded the Trackman position and that the Carrier was within its rights to assign him to cover that position prior to the effective date of his assumption of that position. See Third Division Award No. 42587.

The Board carefully reviewed the record, the Submissions, and the arguments of the Parties at the Hearing.

The Board notes that the Parties' dispute does not center on whether Mr. Hawkins was properly occupying the position of Trackman when directed to perform snow removal work on his regular hours. The Board further notes that the Organization alleges here a violation of Article 10.4(c) of the Agreement, which states in relevant part that:

“Overtime will be assigned in the following manner;
....

(c) Planned overtime, rest day, and holiday work will be given in seniority order to available qualified employees in the territory of the work involved who ordinarily and customarily perform such work. . . .”

There was no evidence that Claimant Principato was denied any planned overtime, rest day, or holiday work in connection with the snow removal assignment here. Said another way, the snow removal work was not shown to involve any of the categories of work referenced in Article 10.4(c).

Because there was no showing that the Carrier violated Article 10.4(c) – the only contract provision asserted to have been violated here – with regard to Claimant Principato, the claim must be denied in its entirety.

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 28th day of April 2020.