

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44074
Docket No. MW-43548
20-3-NRAB-00003-190600**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Foreman B. Lumkins to perform track foreman work in connection with the distribution of ties for undercutter work at Mile Post 29.59 in Sugarland, Texas on February 8 and 9, 2015 instead of calling and assigning senior Foreman N. Clark thereto (System File UP508JF15/1622625 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. Clark shall be compensated eighteen (18) 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.

In the instant claim, the Organization alleges the Carrier utilized junior Foreman Lumkins to perform overtime work in Sugarland, Texas on February 8 and 9, 2015, rather than assigning the Claimant, who was the senior Foreman.

In summary, the Organization argues a) the Claimant is senior to Employee Lumkins and was the proper employee that should have been offered and assigned the disputed overtime, b) the Carrier's defense that the Claimant was offered the overtime work is unsupported by the record, c) the instant claim does not constitute an irreconcilable dispute of facts, and d) the claimant is entitled to the requested remedy.

In summary, the Carrier argues a) the instant claim represents an irreconcilable dispute of fact, b) the Organization has failed to satisfy its burden of proof, and c) the requested remedy is inappropriate.

Here, there is no dispute the Claimant is senior to employee Lumkins. The Organization alleges the Claimant was never called and offered the overtime, while the Carrier contends the overtime was offered to and declined by the Claimant.

The Organization provided a statement from the Claimant on the matter, which reads:

"Gang 4120 & 2984 both work 4-10's with the off days of Sat, Sun, Mon Supervisor James Blacksheare called in the foreman on Gang 4120 on overtime to install ties working behind the undercutter There were also 3 other foremans that worked over the weekend that have less foreman rights than me they also had the foremans from Gang 4006, Gang 4325, & Gang 3193 working the same weekend of Feb 8 & 9 I did not receive a phone call to work I also informed Supervisor Blackshear that i was available to work on Feb 8 & Feb 9 but I did not get a phone call"

The Carrier also provided a statement from Director Fisher on the matter, which reads:

"The work on the Glidden was offered to any and all employees available to work. The claimants denied the overtime."

It is not uncommon for the Board to issue dismissed awards when presented with a dispute of fact. The Carrier maintains that the two competing statements above represent a genuine dispute of fact, and as such, the case must be dismissed. The Board respectfully disagrees.

In its submission, the Organization provided several awards whereby the Carrier failed to establish an affirmative defense because it provided insufficient detail to refute the Organization's showing. Such is the case here. In the instant case, the Claimant maintains that he was not offered, nor called, for the overtime. The Claimant is senior to employee Lumkins. The statement provided by the Carrier lacks sufficient detail as to the specifics of the offered overtime, i.e. who offered the overtime, at what time and place was the offer made, how the offer was made, which claimants denied the overtime, etc. The Carrier statement is simply too vague and insufficient in detail to establish the specifics of the offered overtime or to refute the Claimant's statement that he was not offered, nor called, for the overtime.

Based upon the above, the claim is sustained.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim sustained.

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 11th day of August 2020.