

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44076
Docket No. MW-43576
20-3-NRAB-00003-190602**

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

**(Brotherhood of Maintenance of Way Employees 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 Carrier violated the Agreement when it failed to assign Claimant J. Scott to overtime service in connection with flagging protection for Gang 2545 on February 9, 2015 through February 12, 2015 and instead assigned junior employee R. Hall (System File UP514JF15/1623529 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Scott must now be paid twenty (20) hours at his respective 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 dispute, the Organization alleges on February 9th through February 12th, 2015, the Carrier utilized junior employee Hall to perform overtime flagging protection for Gang 2445 rather than assigning the Claimant, who was senior to employee Hall.

In summary, the Organization argues a) the Agreement was violated when the Carrier assigned a junior employee to perform overtime on the cited claim dates and failed to offer or assign said overtime to the Claimant, b) the Carrier's defenses are without substance of merit, and c) the Claimant is entitled to the requested remedy.

In summary, the Carrier argues a) the flagging duties were properly assigned by the Carrier, b) flagging work is not scope covered, c) the Organization has failed to meet its burden of proof, and d) the Organization's remedy is excessive and incorrect.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. The record reveals that at the time of dispute, the Carrier required flagging work to be performed to protect undercutting operations of Gang 2545. Because Gang 2545 was without a qualified and available employee to provide the flagging protection, the Manager assigned the flagging work to employee Hall. The Carrier required this work to be performed during the Claimant's regularly assigned hours. The Claimant was assigned as Foreman on Gang 2537 and had his own assigned work to attend to and was therefore not available for the flagging work.

Rule 2(c) states:

"When a vacancy occurs in a gang, the Carrier may fill such vacancy by offering the vacant position, in seniority order, to other employees in the gang holding seniority in the classification who are working in a lower rated position. In the event no such employee is available, the Carrier may assign such employees holding seniority in that classification working on the division where the gang is currently assigned that are immediately available (regardless of whether the gang was bulletined as division, zone or system), with immediate notification to the junior cut-off employee (with confirmation to the General Chairman), who will be permitted to go to the job under the existing rules."

Rule 2(c) contemplates the availability of employees when vacancies occur. Here, the Claimant was needed to perform his regular duties and was not available. As to the request for overtime, overtime flows from the regular assignment, [see Third Division

Award 37281] and in the case at hand, the Claimant was not the employee regularly assigned to the flagging work.

Based upon the discussion above, the claim is denied.

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 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 11th day of August 2020.