

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44079  
Docket No. MW-43691  
20-3-NRAB-00003-190605**

**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 Agreement was violated when the Carrier failed to properly compensate Claimants C. Brunner, S. Bales, R. Taylor, N. Elhert and R. Burrow for being on-call on March 6, 2015 through March 9, 2015 (System File UP608BT15/ 1626734 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Brunner, S. Bales, R. Taylor, N. Elhert and R. Burrow must now be compensated for sixty-three and one-half (63.5) hours each at their respective time and one-half 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.

In the instant dispute, the Organization alleges the Carrier refused to properly compensate the Claimants for all hours they were required to remain on-call by their supervisor for the weekend encompassing March 6th through March 9th, 2015.

According to the Organization, the Claimants were approached by their Manager on March 6, 2015 and told that they would be required to remain on-call throughout the entire weekend due to probable cold weather conditions and that they would be paid for all hours they remained on-call.

According to the Carrier, the Claimants' Manager did not tell the Claimants they were required to be on-call throughout the entire weekend but did inquire if the Claimants might be available to work the weekend, if necessary.

Being unable to resolve the dispute, the matter is now before the Board for resolution.

In summary, the Organization argues a) the Claimants were instructed by their supervisor to remain on-call for the entire weekend, b) the Claimants were told by their supervisor they would be paid for all hours they remained on-call, c) on-call, or stand-by service is compensable and supported as such by arbitral precedent, d) the Claimants' statements and Carrier's records prove the Claimants were placed on-call by their supervisor, and e) there is no irreconcilable dispute of facts as alleged by the Carrier.

In summary, the Carrier argues a) the Claimants were not directed to remain on-call for the entire weekend encompassing March 6th through March 9th, 2015, and b) a fundamental dispute of fact exists; therefore, the Organization has failed to meet its burden, and c) there is no Agreement provision for on-call pay.

After a thorough review of the record, the Board finds that the Claimants were instructed to remain on-call for the weekend encompassing March 6th through March 9th, 2015. Furthermore, the Board finds that the Claimants were told by their supervisor that they would be paid for the hours they were on-call.

The Carrier disputes this fact by relying on the supervisor statement dated August 14, 2015. However, the August 14, 2015 statement provided by the supervisor conflicts with the contemporaneous email exchange he had with the Carrier's payroll department on the matter. The Carrier had initially approved the on-call hours for payment when a payroll close-out audit flagged excessive time reporting. The payroll department reached out to the supervisor for an explanation regarding the excessive time reporting. In his email back to the payroll department dated March 27, 2015, the supervisor stated:

“...These employees did work this time. We had them on call over some weather and project related items. If their COT was incorrect, I apologize. But the overall time is correct. I talked to payroll this morning about having a skip check cut for this reason...”

There is no dispute of fact here. The Claimants' statements are supported by the fact that Carrier management had initially approved the disputed on-call hours for payment (although later rescinded). Furthermore, the contemporaneous email provided by the supervisor is indicative that the supervisor intended for the Claimants to be on call and intended for the Claimants to be paid for the hours on-call.

In its submission, the Organization cited numerous awards whereby on-call or stand-by service is compensable. Such is the case here. As a result, 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 11<sup>th</sup> day of August 2020.**