

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44082
Docket No. MW-43946
20-3-NRAB-00003-190621**

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 it failed to assign Claimant T. Graham to overtime service working with the Jackson tamper operator on Gang 2372 between Mile Posts 695 and 704 on June 24, 25, 26, 28, 29 and 30, 2015 and instead assigned junior employee J. Roskilly (System File UP305LF15/1632509 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Graham must now be compensated for seventy-five and one-half (75.5) hours at his overtime rate of pay and for two (2) hours at his triple time 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 the Carrier violated the Agreement when on June 24, 25, 26, 28, 29, and 30, 2015, it assigned employee Roskilly for tamper overtime work on Gang 2372, rather than the Claimant, who was senior to Roskilly.

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

In summary, the Carrier argues a) the work in question was a training event whereby one employee trained a newly assigned Tamper Operator on another gang, b) training is not Scope-covered work, and c) the Organization has failed to meet its burden of proof.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. The record reveals the work in dispute here was a training event. The Carrier was not using the guise of training as a means of bypassing seniority considerations in the assignment of overtime work on a tamper machine. Employee Roskilly was training a new tamper operator assigned to Gang 2372. The Carrier has the managerial right to conduct such training. [Third Division Award 39712]

The record reveals that the work in dispute was training. Based upon such and 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.

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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.