

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44097  
Docket No. MW-42793  
20-3-NRAB-00003-190350**

**The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to assign Gang 5043 Foreman M. Anaya to perform overtime service (track inspection) between South Morrill Yard and Mile Post 166 on the South Morrill Subdivision on June 17, 2013 and instead assigned junior employee M. Martinez thereto (System File D-1335U-304/1590225).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Anaya shall now “\*\*\* be allowed four (4) hours of overtime compensation at his respective rate for the hours worked by the other junior employee, inspecting track on June 17, 2013. This equates to one hundred fifty nine dollars and forty four cents. (\$159.44) \*\*\*”**

**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.**

**Claimant M. Anaya established and held seniority as a Foreman in Group 8 within the Track Subdepartment of the Maintenance of Way and Structures Department. On the day in questions, the Claimant was assigned by bulletin and working as a foreman on Gang #5043 on the South Morrill Subdivision.**

**On June 17, 2013, the Carrier required the services of a foreman to perform overtime track inspection duties between the South Morrill Yards and Mile Post 166 on the South Morrill Subdivision. Rather than call and offer the overtime work opportunity to the Claimant, who was assigned by bulletin as a foreman, the Carrier called and assigned the overtime duties to employee M. Martinez, who is junior to the Claimant and was assigned as a Roadway Equipment Operator (REO) on the cited claim date.**

**The Organization filed a timely claim on behalf the Claimant. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.**

**In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it is the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization met its burden.**

**Rule 26(h) of the collective bargaining agreement (Agreement) between the parties sets forth the requirement for work on unassigned days. It states, in pertinent part, "Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee." There is no doubt that seniority is a valuable property right earned by employees, which must be respected by the employer and that overtime**

must be assigned based on the general principle of seniority. Third Division Awards 19758, 21421, 24332, 29375.

In this case, the Claimant was also entitled to be offered and assigned to the claimed overtime work because he was regularly assigned as a foreman on Gang 5043 and performed track inspection work as part of his regularly assigned duties. By contrast, the record reveals that M. Martinez was regularly assigned as a REO at the time of this dispute and did not regularly perform track inspection work as part of his regularly assigned duties as a REO. Therefore, there can be no dispute the Claimant was the regular employee, as contemplated by Rule 26 of the Agreement, to be assigned to perform the claimed overtime track inspection work on July 17, 2013. Consequently, there can be no question that the Carrier's failure to call and assign the Claimant to overtime track inspection work on July 17, 2013 was a direct violation of the Agreement.

The Carrier's contention that any employee agreement or non-agreement may inspect the track, if duly qualified is not persuasive. The Carrier responded that Martinez was foreman qualified which is an acknowledgement that it was foreman work being done. In addition, it was the foreman of the section who the manager was initially attempting to reach to perform the inspection work. Thus, the Organization has met its burden of proof regarding the violation in connection with the assignment of the work. The Claimant shall be compensated for any overtime pay missed as a result of the improper assignment.

**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.