

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44231
Docket No. MW-43280
20-3-NRAB-00003-200200**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to schedule and hold an unjust treatment hearing as requested by members of Gang TP-08 by letter dated April 14, 2014 concerning the Carrier's improper treatment of said members on March 28, 2014 (System File T-D-4422-M/11-14-0278 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the members of Gang TP-08 shall each ' ... receive sixteen (16) hours of overtime and eight (8) hours of double time with pay to be at claimant (sic) respective overtime and double-time rate of pay for the hours that they were not awarded. We are also requesting the supervisors on TP 08 attend a professional class on how to deal with their employees in a respectable manner. We are also requesting the employees be given a verbal and written apology from all supervisors involved in this Mr. Smith, Mr. Emerson, Mr. Baker, and Mr. Chartier.”**

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.

During the week of March 24, 2014, the Claimants were assigned to production tie gang TP-08, working nights Monday through Friday and lodged in Stillwater, Oklahoma. The BMWED-represented Assistant Foreman of the gang was responsible for obtaining lodging but had only arranged for lodging through Friday morning, instead of Saturday morning, as was normal.

The NCAA Men's Basketball finals were in Oklahoma City that weekend and lodging was difficult to find, especially for a gang of over 40 employees. With the short notice, the closest lodging that could be found was in Blackwell, Oklahoma, approximately 60 miles away. When the Claimants finished working the morning of Friday, March 28, they returned to Stillwater, then moved to the new hotel in Blackwell. They were compensated for travel time, rested, and left for work 1945 on Friday evening.

On April 14, 2014, the Claimants signed a petition requesting an Unjust Treatment hearing and presented it to Foreman Stimac, who gave it to Assistant Roadmaster Baker who then gave it to Assistant Roadmaster Chartier. Rule 62 states as follows:

"RULE 62. UNJUST TREATMENT

An employe who considers himself unjustly treated in matters other than discipline, or in matters other than those arising out of the interpretation and application of the rules of this Agreement, shall have the same right of hearing and appeal as provided in Rule 40, if written request is made to his immediate superior within twenty (20) calendar days after the date of the occurrence of the cause for complaint."

The Carrier maintains the request must be presented to an exempt supervisor, which excludes Stimac as a recipient. It claims a BMWED represented foreman is not and cannot reasonably be considered “an immediate supervisor” within the meaning of Rule 62. In its view, a scheduled foreman does not have the authority to arrange an unjust treatment hearing. It notes Chartier was not the supervisor of the gang at the time. Rather the supervisor was Baker. Further, it notes that Rule 62 only addresses an unjust treatment hearing for an individual employee, meaning that groups of employees are excluded from application of the provision. The Organization counters that each individual employee did sign the petition and it did reach the proper supervisor albeit indirectly.

This Board does not agree with the Organization that the requisites of Rule 62 have been met. The language is clear and specific. It applies to requests from individual employees. A request made by a group of individuals simply cannot be construed as “an employee” even if individual employs each signed the petition. It was one petition on behalf of many, a situation not covered by the terms of Rule 62. Further, the request for and Unjust Treatment hearing was not made to the proper person within the Carrier’s hierarchy. Rule 62 requires that the request be “made to” that employee’s immediate supervisor. These criteria were not met. A bargaining unit foreman is not properly categorized as a member of supervision.

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 23rd day of October 2020.