

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44301
Docket No. MW-43682
20-3-NRAB-00003-200445**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 Agreement was violated when the Carrier failed to assign Head Welder R. Mellenthin and Grinder Operator B. Escamilla to overtime service repairing a frog near Mile Post 28.1, Main 2 1B Switch on February 27, 2015 and instead assigned Head Welder J. Fuget and Grinder Operator L. Lopez (System File C-15-O020-8/10-15-0179 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Mellenthin and B. Escamilla shall now each be paid for seven and one-half (7.5) hours at their respective one and one-half (1.5) rates of pay and for two (2) hours at their respective double time 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.

The Claimants have established and hold seniority in various classifications within the Maintenance of Way and Structures Department. On the date giving rise to this dispute, they were assigned as a head welder and as a grinder in the Welding Sub-department. Employees J. Fuget and L. Lopez have established and hold seniority as head welder and grinder in the Carrier's Maintenance of Way Department. There is no dispute that the Claimants are senior to employees J. Fuget and L. Lopez.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that there is no dispute that the Claimants are senior to employees Fuget and Lopez in their relevant job classifications within the Welding Sub-department or that they were fully qualified and willing to perform the subject overtime work and would have performed it had the Carrier afforded them the opportunity to do so.

The Organization contends that Rule 2A of the parties' Agreement provides, "Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided." Employees governed by this Agreement can obtain and maintain seniority in those various classes (for example, head welder), for the purpose of obtaining preference for work reserved to them by virtue of their assignment to such positions under the Agreement.

The Carrier contends that the Claimants were not assigned to the work duties claimed and while they were more senior, they were not entitled to the duties assigned. The Carrier contends that these duties were assigned via the position-bidding rules.

The Carrier contends that when daily assignments require overtime service, it is not required to schedule its work to ensure that every senior employee ends up with the most overtime on a daily basis, regardless of ability. Roadmaster Kleman stated that he called the junior employees because the Claimants were not able to perform

the required task. The Carrier also argued that the junior employees were the regularly assigned employees.

This statement was not refuted by the Organization. It is well-settled that “material assertions made by either party on the property which are not refuted, rebutted or denied on the property must be accepted as established fact.” Third Division Award 32089. The Carrier has the authority and responsibility to determine who is qualified for the work. The Carrier has no obligation to assign an employee who is not qualified to perform work.

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.