

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44329
Docket No. 43339
16-3-NRAB-00003-160035
20-3-NRAB-00003-190610

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION – IBT RAIL CONFERENCE
PARTIES TO DISPUTE: (
(UNION PACIFIC RAILROAD COMPANY (former
Southern Pacific Western Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Bridge Welder D. Garcia to perform work in connection with the operation of a rail grinding train starting at Mile Post 636.65 on the Tucumcari Subdivision beginning on August 7, 2014 through August 22, 2014 and instead assigned junior employe L. Moore thereto (System File RC-1428S-605/1613459 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Garcia shall now ‘... be compensated the one hundred five and one-half (105.5) hours at his respective overtime rate of pay for the work performed by junior in seniority employee Mr. Lucas E. Moore, on August 7, 2014 through August 22, 2014. ***”

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.

D. Garcia (Claimant) established seniority in the Bridge and Building (B & B) Sub-department on the Tucson Division, Eastern seniority district within the Maintenance of Way and Structures Department and was assigned as a bridge welder. L. Moore also has seniority in the B & B Sub-department and was assigned as a truck driver. There is no dispute that the Claimant has more seniority than Moore. Between August 7, 2014 and August 22, 2014, the Carrier assigned Moore to perform overtime work with a LORAM rail grinding train.

On September 11, 2014, the Organization filed the instant claim on the Claimant's behalf asserting the Claimant held more seniority than Moore and therefore should have been offered the overtime. The parties were unable to resolve the matter after processing it in the normal and customary manner on property. This dispute is now properly before this Board for final adjudication.

The Organization argues the Carrier violated the parties' Agreement when it offered and assigned the rail grinding assignment to an employee with less seniority than the Claimant. It points out this Board has consistently recognized overtime must be assigned based on the general principles of seniority. The Organization argues bridge welders (the title held by the Claimant) have the sole right to the disputed work. Furthermore, the Organization and Claimant deny the Carrier's assertion the Claimant was offered and declined the assignment.

The Board has reviewed the on-property record established for this dispute as well as awards cited by the parties in support of their respective positions. The burden of proof lies with the Organization to establish the Carrier violated the Agreement when it assigned the overtime work to Moore. In this case, the Organization failed to establish the disputed work on the rail grinding train is reserved to a specific class of employee. The Board must therefore deny this claim in its entirety.

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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 6th day of January 2021.