

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44330
Docket No. 43542
16-3-NRAB-00003-160243
20-3-NRAB-00003-190612**

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 call and assign Water Service Sub-department employees F. Edgar and D. Mata to overtime work (provide fire protection) in connection with the operation of a rail grinding train between Mile Post 1297 El Paso to the east up to Mile Post 711 of the Lordsburg and Valentine Subdivisions, El Paso, Texas beginning on October 21, 2014 through October 26, 2014 and instead called and assigned Bridge and Building Sub-department employees thereto (System File RC-1425S-605/1622542 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants F. Edgar and D. Mata shall now each be compensated ‘... seventy-two (72) overtime hours at their respective rate of pay for the work performed by the Bridge and Building employees. Payment shall be in addition to any compensation they may have already received.’”**

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.

F. Edgar and D. Mata (Claimants) have established seniority in the Water Service Sub-Department, Tucson Division, Eastern seniority district within the Maintenance of Way and Structures Department and were regularly assigned as water service foremen within that their sub-department. Between October 21, 2014 and October 26, 2014, the Carrier called and assigned two (2) Bridge and Building (B & B) Sub-department employees to perform overtime fire protection work.

On November 10, 2014, the Organization filed the instant claim on behalf of the Claimants asserting the disputed fire protection work should have been assigned to the members of the Water Service Sub-department who have historically performed the work. 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 failed to offer the disputed work to the Claimants. It also contends the work has historically been performed by employees from the water service department.

The Carrier maintains the Claimants do not have an exclusive right to perform the disputed work over all other employees. Nor is there any Agreement language, historical practice or arbitral precedent to support the Organization's claim.

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 failed to assign the disputed overtime work to the Claimants. In this case, the

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Organization has failed to establish that fire suppression in connection with the rail grinding train is reserved to a specific class of employee. The Board must therefore deny this claim in its entirety.

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.