

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44495  
Docket No. MW-45716  
21-3-NRAB-00003-200021**

**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**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned junior employees T. Taylor and J. Pesquada to assist welding joints and removing and reapplying anchors and spikes at Mile Post 383.754 on the Lampasas Subdivision on Texas District 800 on May 12, 2018 instead of calling and assigning the senior employees L. McClure and A. McMillan thereto (System File 24 12- SL33-1 870/14-18-0601 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants L. McClure and A. McMillan ‘\*\*\* should be made whole for any and all lost work opportunity and wages of which he was rightfully entitled. ”**

**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.

*Factual Background*

On May 12, 2018, junior employees T. Taylor and J. Pesqueda performed sixteen hours of service at the overtime rate and one and one-half hours of service at the double time rate in connection with track work performed at Mile Post 383.754 on the Lampasas Subdivision. The Claimants, who were the senior employees at the time of this dispute, claim they were never called or assigned, despite being fully qualified and willing to perform the work.

*Position of the Organization*

In the Organization's assessment, Carrier management disregarded its contractual obligation to call in the correct employees to perform the required track work. It concludes the Carrier violated the Agreement when junior employees were called in lieu of the Claimants.

*Position of the Carrier*

The Carrier took the position that BNSF did not call either Taylor or Pesqueda to work.

*Analysis*

The evidence in this case is inadequate and cannot establish that the Carrier improperly assigned the work in question.

**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 29<sup>th</sup> day of July 2021.