

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 44496  
Docket No. MW-45845  
21-3-NRAB-00003-200132

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

(Brotherhood of Maintenance of Way Employes 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 employes C. Torres and D. Bryant to perform overtime service repairing a weld defect at Mile Post 9.692 on the Topeka Subdivision of the Kansas District 700 on July 30, 2018 that continued into July 31, 2018 instead of calling and assigning Messrs. R. Kelly and K. Collier thereto (System File 493-SL33-1892/14-19-0024 BNS).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Kelly and K. Collier shall now each be compensated for five and one-half (5.5) hours at their overtime 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.

*Factual Background*

The facts of this case are largely undisputed. Claimants R. Kelly and K. Collier established and maintained seniority within the Carrier's Maintenance of Way and Structures Department. On the dates giving rise to the dispute, Claimants were assigned and working as headquartered welders on the Topeka Subdivision of the Kansas Seniority District 700.

At approximately 1730, the Topeka Track Supervisor found a defective frog at the East Siding Switch in Desoto, Kansas near mile post 9.692 on the Topeka Subdivision. As a result, 10 mile per hour slow order went into effect on the 55 mph main line track between Kansas City and Topeka.

Beginning at 2030 on July 30, 2018 and continuing until 0200 the next day, the Carrier assigned off-territory Kansas City Common Point Welders C. Torres and D. Bryant to repair the weld defect instead of assigning the Claimants.

Applicable provisions of the Agreement state as follows, in pertinent part:

**RULE 33 - OVERTIME SERVICE \* \* \***

**33(f) - Work Required on a Day which is Not Part of Any Assignment.** Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by the senior qualified and available employee off in force reduction or working in a lower class who will otherwise not have 40 hours or work that week; in all other cases by the regular employee. \* \* \*

**33(i) - Preference To Overtime Work.** Except when employes are utilized as provided in Rule 33 - (f), employes assigned to sections, work districts, specific areas and/or locations shall be given preference in relative seniority order among employes of the gang, work district or location to overtime work to be performed within such section, district, area or location.

**Employes assigned to road gangs, such as Track Extra Gangs and B&B Gangs, Machine Operators, etc., shall have preference to overtime work in relative seniority order in connection with work projects to which they are assigned.**

*Position of Organization*

**The Organization maintains Claimants were entitled to preference in the assignment of the overtime work involved herein because they were the headquartered welders on the Topeka Subdivision, which is the location of the disputed work. It does not buy the Carrier's defense that there was an emergency at the time.**

*Position of Carrier*

**The Carrier views the slow order situation as an emergency, deeming it necessary to reduce the chance of BNSF equipment being damaged by the defective frog or having it cause a derailment. It points out that this slow order significantly disrupted rail traffic in the area by reducing freight speed by 45 mph. In its assessment, this constituted an emergency and required immediate repair.**

**The Carrier notes that at the time, Claimants were working with the rail detector car approximately 200 miles away in Concordia, Kansas on the Strong City Subdivision. In addition, both Claimants had already been on duty for 10 hours. Because both Torres and Bryant could respond promptly, they were assigned to make the emergency repairs to restore the main line track to full unrestricted service as quickly as possible.**

*Analysis*

**The evidence in this case establishes a situation grave enough to constitute an emergency. The travel distance for Claimants was enough to impose significant delay in effecting a repair. The Carrier was within its rights to assign Torres and Bryant, who were in a position to respond promptly to the Carrier's pressing needs.**

**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.