

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44504  
Docket No. MW-46144  
21-3-NRAB-00003-200804**

**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 Roadmaster M. Epsey to perform overtime service inspecting track between Mile Posts 566.0 and 486.7 on the Seligman Subdivision on March 24, 2019 instead of calling and assigning the employee B. Tindell thereto (System File 2418-SL33-1935/14-19-0236 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Tindell shall now be compensated for eight (8) hours at his overtime rate 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 Claimant Tindell has established and maintains seniority within the Carrier's Maintenance of Way and Structures Department. On March 24, 2019, he was assigned and working as a foreman on Gang TSCX 1069. The Carrier assigned Roadmaster M. Espey to perform overtime service inspecting track between Mile Posts 566.0 and 486.7 on the Seligman Subdivision. It is undisputed that Roadmaster Espey holds no seniority under the parties' Agreement.

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

**RULE 1 – SCOPE**

This Agreement governs the hours of service, wages and working conditions of employees of the following classes in the Maintenance of Way and Structures Department: Track Supervisors and Motor Track Inspectors, to the extent set forth in Appendix No. 23; Bridge and Building Foremen; Paint Foremen; Bridge Inspectors; Assistant Bridge and Building Foremen; Steel Bridgemen (not including Steel Bridge or Assistant Steel Bridge Foremen); Bridge and Building Mechanics; Bridge and Building Painters; Bridge and Building Helpers; Welder Gang Foremen; Welders; Heat Treaters; Welder Helpers; Extra Gang Foremen; Fence Gang Foremen; Section Foremen; Assistant Extra Gang Foremen and Assistant Section Foremen; Trackmen; System Rail and Plow Gang Employees; Fuel Foremen; Pumps and Water Treaters; Machine Operators; Bridge and Building and Water Service Laborers; Fuel Station and Sand House Helpers and Laborers; Track, Bridge, Tunnel and Crossing Watchmen and Flagmen and such other classifications as may be shown in the appended wage scale or which may hereafter be added thereto. \* \* \*

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

In the Organization's assessment, this dispute involves a clear violation of the Claimant's seniority rights. On March 24, 2019, the Carrier assigned Roadmaster M. Espey to perform overtime service inspecting track instead of calling and assigning the Claimant. Roadmaster M. Espey holds no seniority rights under the parties' Maintenance of Way Agreement. The Organization concludes that the Claimant was entitled to preference in the assignment of the contested work.

#### *Position of Carrier*

On the day in question, Roadmaster Michael Espey was performing a Track Supervisor evaluation and ride along. He was a passenger on a hy-rail trip with one of his qualified Track Supervisors assigned to the territory. This was not a situation where there was a need to call an employee in for overtime, as incorrectly claimed. Rather, performing Track Supervisor evaluations is part of the Carrier Roadmaster's job and there was no violation of the Agreement.

#### *Analysis*

The evidence in this case fails to establish that Roadmaster Espey inspected any track on the day in question. He has only been shown to have been riding along. Further, he had a restriction and was neither allowed nor qualified to perform inspections. He forfeited his track supervisor seniority on October 4, 2018. The evidence is persuasive that Espey was performing a track inspector evaluation, a duty which properly falls within his job.

Insofar as there is no evidence that any track inspection took place, the Organization has not met its burden of proof.

**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.