

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44538  
Docket No. 45818  
22-3-NRAB-00003-200137**

**The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned employee W. Perro to perform overtime track repair work at the Waterville Yard Facility on November 3, 2018 instead of calling and assigning Mr. R. Strout thereto (Carrier’s File MW-19-07 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Strout ‘\*\*\* is due a total of \$342.09 in compensation to provide proper remedy for the lost work opportunity that resulted from the Carrier’s improper assignment of Mr. Perro to the disputed overtime work.’ (Emphasis in original).”**

**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.

Claimant R. Strout has established and holds seniority within the Carrier's Maintenance of Way Department. The Claimant was assigned and working as a trackman on the I&R Maintenance Crew No. 3643 at the time of this dispute.

On November 3, 2018, a derailment occurred in the Carrier's Waterville Yard facility. It is also undisputed that the claimed work occurred in the Claimant's regularly assigned territory and that the work belonged to the Claimant per the Agreement between the parties. Deeming the situation an emergency, the Carrier contends that it called the Claimant to work the overtime assignment resulting from the derailment. However, the Claimant did not answer, and it went on to call in other employees who happened to be junior in seniority to the Claimant to work the overtime assignment. The Claimant disputes that the Carrier called him.

In response, the Organization submitted a claim by letter dated December 6, 2018. This claim is based on the proper application of Article 10.4 (b) which provides:

"Calls outside of the regular assigned work period will be given to the crew regularly assigned to inspect the applicable territory. If additional forces are needed, preference will be given to members of other crew(s) assigned to the applicable territory, respecting seniority within the required classification(s). If more additional forces are needed, they will be obtained from the Maintenance Crews nearest to the location of the work, again respecting seniority within the required classification(s). It is understood that in the application of the above, all forces within the System Seniority Zone which contains the work involved will be used before other forces are called."

The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before the Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the

alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

There is insufficient evidence that the Carrier failed to contact the Claimant. Track Supervisor Steve Richard provided a written statement attesting to the fact that he called the Claimant who did not answer and due to necessity, he moved on to other employees to address the circumstances. The Carrier contends that this was an emergency as the derailment was holding up the ability to move traffic out of one of the major yards on the property. Additionally, as the Carrier points out, a derailment is defined as an emergency per Article 8.5 of the Agreement. The Organization maintains that the Carrier did not exert sufficient effort to reach the Claimant by placing only one call to him. The Organization relies on several awards from this Division that have found that the Carrier must make more than a single attempt to phone a senior employee before giving an assignment to a junior employee. The Board's reading of the awards cited by the Organization notes that to be the requirement unless there is an emergency. In this case, the Board agrees that there was an emergency dictating that Carrier supervisors act with due diligence. No evidence has been presented to persuade the Board Supervisor Richard did not call the Claimant. Therefore, we find no violation of the Agreement. Accordingly, the claim is denied.

**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 8th day of October 2021.