

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44589
Docket No. MW-44741
22-3-NRAB-00003-170572**

The Third Division consisted of the regular members and in addition Referee James M. Darby 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 employee D. Dodson to perform overtime work (flagging) at the new siding project at Everton, Missouri between Mile Posts 176 and 179 on March 19 and 20, 2016 instead of calling and assigning senior employee R. McDaniel thereto (System File 518-SL33-1646/14-16-0304 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. McDaniel shall be compensated for twenty (20) hours at the applicable 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.

The record shows the Claimant, a Surfacing Extra Gang Foreman, has established and maintains seniority within the Carrier's Maintenance of Way and Structures Department. On March 19 and 20, 2016, the Carrier assigned Greenfield Section Assistant Foreman D. Dodson to perform the overtime work of flagging for contractors working on a new siding project in Everton, Missouri between Mile Posts 176 and 179 on the Fort Scott Subdivision of Southeast District 900. The Claimant holds seniority as the regularly assigned employee on the territory, but was not assigned to perform the overtime work in question. The project was located 15 miles from the Greenfield headquarters. On April 13, 2017, the Organization filed this claim alleging that Claimant, who was headquartered 90 miles away in Fort Scot, Kansas, should have been assigned instead of Mr. Dodson because he was "the senior Headquartered employee at the work location." BNSF responded explaining that the disputed work occurred on Mr. Dodson's assigned territory, not the Claimant's.

This dispute is governed by Rules 33(f) and (i) of the parties' Agreement, which state as follows:

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.

The Organization contends that the Claimant and Dodson “both work for the same Carrier Official that cover the same territory.” Thus, Claimant is the “regular employee” under Rule 33(f) since he is “regularly assigned to Southeast Seniority District 900. It also asserts that the Claimant was entitled to the overtime work in question pursuant to Rule 33(i) “due to the fact that the Claimant was the senior headquartered employee assigned to Southeast Seniority District 900 and the overtime work was performed on the Subdivision located within said district.”

The Carrier responds by providing the following contractual explanation for its decision to award the instant overtime work to Assistant Foreman Dodson:

The disputed work was flagging for a large three-mile siding extension project on a weekend (a day not part of any assignment). Consequently, Rule 33(f) applied. In this case, the employee that was assigned to perform this task during the week did not want to work the weekend. Instead of requiring that employee to do so, Roadmaster Hennigh contacted the Section gang covering that location, which was the Greenfield Section, offering the overtime and Assistant Foreman Dodson accepted. Mr. Dodson was covered by the first paragraph of Rule 33(i), while Claimant as an extra gang Foreman not assigned to this project and was governed by the second paragraph of this provision. Neither of the above provisions in Rule 33 required Roadmaster Hennigh to offer the overtime to an extra gang employee on another territory first; rather, it clearly gave preference to Mr. Dodson over Claimant because the work occurred on the Greenfield Section’s territory.

The Board concludes that on balance the Carrier’s interpretation of Rule 33 (f) and (i) is more persuasive, inasmuch as it gives full effect to all of the terms set forth within these provisions (for e.g., “section, district, area or location,” “work projects”). The contractual provisions make no reference to whether an employee claiming the work reports to the same roadmaster as the employee who is awarded the overtime by virtue of being the senior qualified employee in the “area or location” (which Dodson clearly was). Thus, the location in question was not part of

the Claimant's "section, district, area or location." The fact that several gangs may report to the same Roadmaster does not mean that all of those gangs have preference in seniority order to any work occurring at a location under that Roadmaster's supervision.

Furthermore, we find reasonable the Carrier's contention that the Claimant's status is governed by the second paragraph of 33(i). In this case, the Claimant was assigned to "Extra" Gang Foreman Position 99102 on a Surfacing gang. Since the Claimant was not assigned to the work project at issue, pursuant to the second paragraph of 33(i) he did not have preference to this overtime, regardless of his seniority amongst all of the other employees that report to Roadmaster Hennigh.

Accordingly, for all these reasons 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 29th day of October 2021.