

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44590
Docket No. MW-44747
22-3-NRAB-00003-180036**

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 Track Supervisor D. Carlos to perform overtime work on May 9, 10 and 11, 2016 and initially compensated him therefore but later recouped such overtime payments via cut letters issued on June 23, 2016 (System File 2415-SLA23-164/14-16-0439 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Carlos shall be reimbursed the overtime payments improperly recouped by the Carrier.”**

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 Claimant performed his regular assigned duties of inspecting track as required on May 9, 2016. He was then released from service only later to be called back into work by Roadmaster Martinez, who then instructed the Claimant to assist with the Rail Grinder who was at the time moving across the Claimant's territory. After being called back into work, the Claimant worked a total of four hours overtime (\$ 197.36) on this project. On May 10, 2016, the Claimant worked his regular shift inspecting track, was released and went home and then was again called back by Roadmaster Martinez to assist the Rail Grinder. The Claimant was paid (\$271.37) for this five (5) hours and thirty (30) minutes overtime work. The Carrier paid the overtime in question totaling (\$468.73), which was approved by the Roadmaster. Only later did the Carrier Payroll Department come back in and take the monies the Claimant received in the form of a payroll cut.

Under the ATSF Agreement, a "track supervisor" is a rank and file employee whose primary duties are to inspect track (on other properties this job is usually referred to as a "track inspector"). Track supervisors on the ATSF territory are paid monthly with normal work periods that can vary from day to day with non-traditional but regularly assigned rest days. Specifically, Appendix 23 provides that track supervisors are not subject to any basic day or overtime provisions except to the extent set forth in the Agreement. In other words, their workday is not limited to eight hours. Pursuant to Appendix 23, Article IV, track supervisors are eligible for overtime only when they perform service on a rest day or holiday or when they are called to perform service not continuous with their normal work period.

BNSF Engineering issued a policy in 1998 that provided Track Supervisors overtime after working 8 hours continuous service but only when they were performing one of eight tasks identified by specific overtime reason codes (including derailments, snowstorms, earthquakes, as well as an "Other" category). In 2001, Engineering updated its policy eliminating the "Other" excepted overtime reason code. In January 2016, BNSF's Timekeeping Department created a system edit that would block the entry of any overtime entered that was continuous with the track supervisors' normal work period and did not meet one of the seven overtime codes identified in Engineering's 2001 Track Supervisor policy.

Thus, the issue presented here is whether track supervisors are entitled to overtime compensation for work performed that: 1) is not associated with their regularly assigned duties and 2) is outside of, but continuous with, their normal work period.

This identical issue was recently presented to this Board in a series of cases involving these same parties. In those cases, this Board held as follows:

There is no dispute between the parties that a call following a break in service entitles a Track Supervisor to overtime pay. There is also no dispute that a call on a rest day or holiday is also entitled to overtime. The issue in the instant matter involves whether a Track Supervisor is entitled to overtime when doing non-inspection work continuous a work period.

* * *

Appendix 23 recognizes that track supervisor duties are unique. However, the evidence and the record establish that the uniqueness of the position is not all-encompassing. The plain language of Appendix 23 cannot stand for the Carrier's proposition which, in essence, is that all work done that does not fall within the seven casualty codes if it is performed continuous is not eligible for pay. Under the Carrier's analysis, a Track Supervisor could be held for hours doing Track Supervisor duties without compensation. The prior, eliminated casualty code allowed for a Roadmaster to approve assignments that were not within the seven other casualty codes – thereby preserving the uniqueness of the Track Supervisor job while acknowledging that some work is beyond Track Supervisor duties. If there had been abuse, as the Carrier cites as the reason for eliminating the eight casualty code, then there is recourse to discipline employees.

Here, the Organization established that the Claimants were assigned duties that went beyond track inspection duties. They are entitled to be compensated for those additional duties....

Third Division Award No. 43247, pp. 12-13 (Claus 2018).

For the May 11, 2016, overtime work the Claimant is entitled to overtime compensation, since the record shows he was released, went home, and was called back. Regarding the remaining overtime hours, the record shows that the Claimant performed grinder duties that go beyond those customarily performed by track supervisors in excess of his regular shift. Therefore, consistent with this Board's prior rulings, he is entitled to overtime compensation consistent with Appendix 23, Article IV.

Accordingly, for all these reasons the claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of October 2021.