

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44598  
Docket No. MW-45431  
22-3-NRAB-00003-180597**

**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 failed to assign Mr. J. Dollarhide to perform overtime service on the Seligman Subdivision on March 29, 2017 through April 8, 2017 and instead assigned junior employee C. Yarbrough (System File 2418-SL33-1734/14-17-0150 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Dollarhide must be compensated for fifty-nine and one-half (59.5) hours’ overtime and for ninety-seven (97) hours’ double time at his appropriate 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 that from March 29, 2017, to April 8, 2017, Roadmaster Kevin Self assigned Seligman, AZ Section Foreman Charles Yarbrough to provide night coverage across his area of responsibility on the Seligman Subdivision. This temporary schedule change was in response to a forecasted winter storm system that had the potential to impact operations across the territory. The Seligman Subdivision is one of several high-priority subdivisions that make up the BNSF Southern Transcontinental Corridor, which runs between Southern California and Chicago, Illinois. Due to the significant impact this corridor has on BNSF operations and its customers, Roadmaster Self had employees on duty around the clock ready to respond at a moment's notice to any track-related service interruption caused by the impending winter storm.

To obtain the necessary 24-hour coverage, Roadmaster Self decided to use two 12-hour shifts starting at 0800 and 2000 hours respectively. Since this 12-hour schedule would result in employees (foremen) performing service outside of their regular assigned work hours, and consequently incurring several hours of overtime, Self contacted the senior-most Section Foreman on his territory to offer the work opportunity—Williams, AZ Section Foreman John Calley. Mr. Calley declined the overtime opportunity. Therefore, Roadmaster Self assigned Mr. Yarbrough, who was the only other Section Foreman assigned to the territory and under his supervision.

The Organization filed the instant claim alleging that since the Claimant was the senior foreman assigned to Seligman Subdivision of Southwest District 600, he was entitled to be offered the work in question. The Carrier asserts that pursuant to Rule 33(i), it properly assigned the overtime work to the senior foreman located within the territory where the work was performed.

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 Board concludes that on balance the Carrier's interpretation of Rule 33(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 exclusive reference to whether an employee claiming the work is part of the involved seniority district. It refers to the work being part of Claimant's "section, district, area or location." The fact that several gangs may operate within the entire seniority district 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.

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 29<sup>th</sup> day of October 2021.