

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44638
Docket No. MW-44309
22-3-NRAB-00003-210227**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned members of the Virden Section Gang to perform overtime work (building a track panel) at Mile Post 119X on the Beardstown Subdivision on December 13, 2015 instead of calling and assigning Beardstown Section Gang members M. Zierfus, D. Cox, d. Boyd, C. Heaton and A. Weishaar thereto (System File C-16-O020-3/10-16-0126 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Zierfus. D. Cox, D. Boyd, C. Heaton and A. Weishaar shall each be paid eight (8) hours at their respective overtime rates 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 Claimants listed above have established and hold seniority in their respective classifications within the Maintenance of Way Department and Sub-Structures Department. All were regularly assigned as members of the Beardstown Section Gang to work within their assigned territory that included MP119X within the Beardstown Subdivision. On Sunday, December 13, 2015 the Carrier assigned members of the Virden, IL section gang to perform the overtime work of building a track panel at MP 119. The Claimants, said to be fully qualified and willing to perform the work, were not called, resulting in the above-noted timely filed and properly progressed claim that was not resolved on the property and has been progressed to this Board for final and binding resolution.

The Organization relies on Rules 2.A and B., 6.A., 29 A., B. and C. and 30.Aa. and B., but particularly on Rules 2.A. and 29. The Claimants were normally assigned within their territory to build track panels. There is no dispute that they were not called on December 13, 2015. The rail grinding train that the Carrier said was to be protected by the Claimants was gone before the weekend; therefore, the work should have been offered to the Beardstown Section rather than the adjoining Virden Section. The Carrier has not provided evidence to support the affirmative defense. Requested damages are appropriate.

The Carrier relies on Rule 24.J. and notes that the Beardstown Gang had been charged with protecting the grinding train during the just-ended week while the Virden Gang was assigned the track panel work, which was not reserved to the Beardstown section. The Claimants were fully employed so that they are not entitled to damages and the Organization has not substantiated the Claimants' hours. Should the claim be sustained, because the Claimants did not perform the track panel work, they should be compensated at straight-time rates.

The Rules to which the Board looks for guidance are as follows. Rule 2. Seniority Rights and Sub-Department Limits, at Section A states that "Rights accruing to employees under their seniority entitles (sic) them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided. Rule 24. Forty Hour Work Week at Section J Work on Unassigned Days, states that "Where work is required by the Company to be

performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.” Rule 29. Overtime concerns when and at what rates overtime will be paid.

Rule 2.A. establishes the entitlement to seniority rights “as hereinafter provided,” requiring that Rule 2.A. be applied consistent with other relevant Rules in the Agreement. Rule 24.J. clearly is relevant. The claim was not filed on behalf of extra or unassigned employees who were short of forty (40) hours for the week; therefore, the Board must determine whether the Claimants or members of the Virden, IL section gang were the regular employees for purposes of the disputed assignment. Awards submitted by both the Organization and the Carrier support the proposition that overtime hours go to employees, even when junior, who are qualified and who have regularly done the overtime work. See Special Board of Adjustment 1110, Award 111, Public Law Board 4138, Award 21 and Third Division Awards 37052, 24931, 22821, 33440 and 40406. There is no dispute that during the week prior to December 13, 2015 the Claimants were assigned to protect the grinding train and the Virden Section Gang was assigned the work of building the track panels. The Virden Gang, therefore, must be considered the regular employees for purposes of the December 13, 2-15 assignment. The Carrier properly applied the Agreement.

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 15th day of December 2021.