

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45002  
Docket No. MW-43082  
Old NRAB-00003-150258  
23-3-NRAB-00003-220933**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

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

**(1) The Agreement was violated when the Carrier called and assigned employes from Seniority Districts T-3 and T-8 to perform track maintenance work on Seniority District T -9 at the east end of the Proviso Yard 2 in Northlake, Illinois on January 18 and 19, 2014 instead of calling Seniority District T-9 employes C. Rapier and T. Noakes (System file1B-1431C-071/602016 CNW).**

**(2) As a consequence of the violation to in Part (I) above, Claimants C. Rapier and T. Noakes shall now ' \*\*\* each be compensated for the twenty four (24) hours of overtime and one (I) hour of doubletime, as shown earlier in the claim, at the applicable 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.

**Factual Background:**

On January 18 and 19, 2014, a derailment occurred at the East end of Proviso Yard 2, located in Northlake, Illinois. The Carrier maintains it first called the employees on the seniority roster of the T-9 district to respond to the derailment. The Carrier extended the call to employees on adjacent districts, asserting additional employees were needed. The Carrier implies that Claimants would have worked if they had answered their phones. The employees phone records were not put into evidence.

**Position of Organization:**

As the Organization sees it, the work should have been offered to Claimants. Their superior seniority is established within in the Track Subdepartment on the T-9 Seniority District, which includes the Proviso Yard 2 in Northlake, Illinois. On January 18 and 19, 2014, Claimants were all regularly assigned to perform track maintenance, repair, construction, etc., duties within a specified territory located within the T-9 Seniority District. There is also no dispute that the employees from the T-3 and T-8 Seniority Districts were not regularly assigned to perform work on territory located on the T-9 Seniority District. It concludes that given these uncontested facts, a contract violation is evident.

**Position of Carrier:**

As the Carrier sees it, the Organization failed to show that any work was performed by employees of districts T-3 and T-8. In addition, the Organization failed to provide the names of any employees from the named districts who may have performed service for the Carrier on the dates/hours in dispute. Also, the Carrier states that the Organization's requested remedy is excessive because well-established arbitral precedent states that it is improper to seek relief at the overtime rate for work that was not actually performed.

It contends a derailment is considered an emergency situation in which well-established industry precedent affords the Carrier greater latitude in allocation of their resources. In addition, the Carrier notes that Director C. Nichols claimed all senior employees on the T-9 district were called to perform the work associated with the derailment. It concludes the Agreement was not violated when the Carrier first

called the senior members of the T-9 district, and only when additional employees were needed were employees from T-3 and T-8 districts called.

Analysis:

Director of Track Maintenance C. Nichols contended that “[a]ll employees were called from the entire seniority roster including furloughs.” The Organization maintains Claimants were not called and the work opportunity was given to employees outside of the seniority district. It did not provide the phone records of those employees to substantiate its claim.

Because an irreconcilable conflict of material fact exists, we deny this claim, in line with Third Division Award 33895. In that case, Referee Eischen noted an irreconcilable conflict in material fact, set forth in diametrically opposed written statements from the two primary witnesses. He observed that in such situations of evidentiary gridlock, it is well settled that the Board must dismiss the claim on grounds that the moving party has failed to establish a prima facie case.

We find that the Organization has not met its burden of proof in this case. Director of Track Maintenance C. Nichols’ statement has not been persuasively rebutted. There is no hard evidence as to whether or not Claimants were called. There is no reason on the record as to why their phone records could not have been provided. As with prior decisions, the evidence stands in equipoise, meaning the Organization has not adequately established the likelihood of its allegations.

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 28<sup>th</sup> day of June 2023.