

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45008
Docket No. MW-46198
23-3-NRAB-00003-200855**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

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

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on April 19, 2019 when the Carrier failed to assign Senior Mechanic M. Martinez, Jr. to perform overtime service assembling and installing a tamper work head on the Mark IV Lead Tamper at the Hay Barn in the Blue Island work zone and instead assigned Junior Mechanic D. Bennet thereto (Carrier’s File Martinez6626DB061419 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Martinez, Jr. shall now ‘... be compensated fifteen and one-half (15.5) hours of overtime hours at Claimants (sic) applicable overtime rate of pay for mechanic work performed by D. Bennett on April 19, 2019.’”**

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.

Claimant M. Martinez and junior employee D. Bennett have established and maintain seniority as mechanics in the Carrier's Maintenance of Way Department. Both employees were holding the position of mechanic on Seniority District West headquartered at the Blue Island Mechanic Shop, otherwise known as the Hay Barn. The Claimant's seniority date is June 4, 2004 and employee D. Bennett's seniority date is July 13, 2004. On April 19, 2019, a railroad holiday, the Carrier assigned D. Bennett and N. Silva who were from the engineering department to fix a tamper located in the Michigan Avenue Yard. The Carrier's property is divided into two districts, east and west. The Michigan Avenue Yard is located in the east district. The two mechanics assigned to the work, D. Bennett and N. Silva are the only two mechanics with seniority rights in the east district, although they also have seniority rights in the west district. Claimant has more seniority in the west district than both Bennett and Silvas but he does not maintain seniority in the east district.

The work assignment required the crew to assemble the tamper work head prior to installing it on the tamper. It was necessary for the crew to take the work head to the Hay Barn located in Blue Island, IL which is situated in the Carrier's west district. The issue before this Board is whether the work on April 19, 2019 should have been assigned to east district mechanics or west district mechanics. The Carrier's position is that the work belonged to east district mechanics as the tamper was in the east district and was being used by an east district operator for an east district assignment. The Organization argued that the work started in the west district because Bennett assembled the work head at the Hay Barn before installing it on the tamper in the Michigan Avenue yard.

This claim is based on the proper application of Rule 17 and Appendix H. Rule 17 states:

When work is to be performed outside the normal tour of duty and not in continuation of the days work, the senior active employee in the required class in the assigned work zone will be given preference for overtime work in the appropriate class in which he holds seniority.

Appendix H states:

Three working zones will be established: Gibson Zone will coincide with the East District, Blue Island Zone will consist of IHB territory

from the Indiana-Illinois stateline to Chicago Ridge and Norpaul Zone will consist of IHB territory from Chicago Ridge to Franklin Avenue.

The following examples may aid in the application of this rule. If employees are required at Blue Island for overtime, the oldest Blue Island Work Zone trackman would be called first, regardless of what position he holds on straight time. If additional people are needed, the next oldest man would be called and so on. If a welder or operator are needed, then the oldest active welder or operator on that zone would be called. Only Blue Island Zone people would be called until they are all exhausted, then Norpaul Zone people would be called.

The Organization submitted a claim by letter dated June 14, 2019. The claim was properly handled by the parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden. The Carrier's undisputed practice for assigning work is that if the equipment needing repairs is being used for east district work and the employee operating that equipment is working an east district assignment, then east district mechanics will be assigned to fix the machine. The controversy concerns whether the work started in the east district or the west district. The record evidence is contradictory. It is the Organization that has the burden to establish where the overtime work was performed. Therefore, the Organization has presented insufficient evidence to support the claim.

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 28th day of June 2023.