

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45016
Docket No. MW-47421
23-3-NRAB-00003-220526**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on January 16, 2021 when the Carrier failed and refused to call out and use Gibson active Trackman J. Reyes to perform trackman duties of repairing track after a derailment and operating a plow truck in the Gibson work zone and instead chose to callout and use junior employee F. Velasquez to perform this work (System File D-21IHB17-1 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Reyes shall now ‘... be compensated thirteen (13) hours overtime for work performed by F. Velasquez on January 16, 2021 at Claimants (sic) applicable Trackman overtime 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.

On January 16, 2021, employee F. Velasquez, a welder, was called out to perform welding work on a derailment. As he was waiting to be able to start his work, it began to snow and he was asked to operate a salt truck, which he did for approximately 2½ hours before he was able to start his welding work. Mr. Velasquez was junior to the Claimant, who was employed in the MOW Department as a trackman.

The Organization argues that the Carrier violated the Agreement when it called a junior employee rather than the Claimant to work on the derailment and to operate the salt truck. The work performed was that of a trackman and the Claimant held seniority in that required class in the Gibson Work Zone.

According to the Carrier, no trackmen were called for the derailment. Velasquez was called as a welder. Because the train was not yet ready for welding work, he worked for a few hours operating the salt truck. While the Claimant had more seniority as a trackman, he had no seniority as a welder. Further, operating a salt truck is not trackman work and welding is not trackman work. When the cars had been rerailed, Velasquez worked as a welder. When that work was completed, he worked for an unspecified amount of time doing unspecified “labor” work. The Carrier is permitted to use an employee who is already on duty for other work without having to call out another employee.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. Under the particular circumstances of this case, where the other employee was called in to perform welding work, not trackman work, and then performed a limited amount of other work that arose unexpectedly, there is no violation of 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 3rd day of August 2023.