

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45046
Docket No. MW-46447
23-3-NRAB-00003-210265**

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

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

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Mr. T. Pierce to perform overtime service working with Tie Crew 2943 on the Freight Main Line on June 22, 2019, and instead assigned junior employee C. Richotte thereto.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T Pierce shall now ‘*** be compensated eight (8) hours at the Trackman time and one-half rate of pay as all credits for vacation and all other benefits for the dates claimed for the missed work opportunity ***.’**

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.

At the time this claim arose, Claimant T. Pierce was assigned to the Track Sub-Department. Employee C. Richotte also had established seniority in the Track Sub-Department and was junior to the Claimant by over a month. On June 22, 2019, the Carrier assigned Mr. Richotte to perform overtime working with Tie Crew 2943 on the Freight Main Line. Mr. Pierce did not work that overtime.

The Organization filed a claim on Mr. Pierce's behalf on July 12, 2019. The Carrier denied that claim on September 9, 2019. The Organization appealed the denial on October 31, 2019, and the matter was subsequently progressed in accordance with the Parties' Agreement, after which it remained unresolved. It is properly before the Board for adjudication.

The Organization contends that the Claimant was the regularly assigned employee and senior to Mr. Richotte and should have been given the overtime assignment in accordance with Rule 10.4 (c) of the Parties Agreement. Rule 10.4(c) reads in pertinent part as follows:

Planned overtime, rest day, and holiday work will be given in seniority order to available qualified employees in the territory of the work involved who ordinarily and customarily perform such work. If additional forces are needed, the provisions of (b) above will apply.

The Organization maintains that the Carrier has assumed, without substantive documentation, that the Claimant was offered the overtime assignment in question, but refused the offer. It contends that there is no firm evidence on this record to support the Carrier's assertion that, because the Claimant did not work the overtime, he "must have refused it." It asks that the instant claim be sustained in full.

For its part, the Carrier contends that Supervisor T. Chessie's September 9, 2019 note, appended to the Carrier's initial denial of the present claim demonstrates that the Claimant was, in fact, offered the overtime work in question but turned it down. Accordingly, the Carrier asserts that the instant claim should be denied in full.

Beyond Track Superintendent Chessie's assertion, in his September 9, 2019 note to Carrier's personnel officer, there is no evidence on this record, such as logged phone calls or witness corroboration, to suggest that the Claimant was actually offered the opportunity to work the overtime at issue. In fact, even the Superintendent's "supporting" note from Mr. Chessie is based only upon hearsay from the crew foreman. In his September 9, 2019 initial denial of this claim, the personnel officer surmised that

“One can only conclude that Mr. Pierce must have declined the overtime...” That conclusion, however, is supported by no first-hand testimony and no documentary evidence.

In light of the foregoing, the Board has no choice but to sustain the claim as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of September 2023.