

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45232  
Docket No. MW-46308  
24-3-NRAB-00003-210028**

**The Third Division consisted of the regular members and in addition Referee Melinda Gordon when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned junior employee A. Hanson to perform overtime flagging work in the area of Richmond, California on August 19, 20, 21, 22 and 23, 2019 instead of calling and assigning senior employee V. Harris thereto (System File 2419-SL33-1968/14-19-0362 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant V. Harris shall now “\*\*\* be paid forty-eight (48) hours double time, sixteen (16) hours overtime at his regular Flagging Foreman 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.

The basic facts of this case are not in dispute. Claimant is a local flagging foreman. The Carrier mistakenly assigned two employees to the same overtime flagging assignment from August 19 to August 23, 2019. Both employees initially reported to the flagging assignment based on instructions given by Carrier management to flag at the facility for the week. Both employees worked the first night. However, the junior employee remained after the first night, and Claimant, the senior employee, was relieved of the assignment.

Both the Carrier and the Organization rely on Rule 33 (i), Overtime Service, to support of their respective positions. Rule 33(i) provides as follows:

**“33(i) - Preference To Overtime Work. Except when employees are utilized as provided in Rule 33 - (f), employees assigned to sections, work districts, specific areas and/or locations shall be given preference in relative seniority order among employees of the gang, work district or location to overtime work to be performed within such section, district, area or location.**

**Employees assigned to road gangs, such as Track Extra Gangs and B&B Gangs, Machine Operators, etc., shall have preference to overtime work in relative seniority order in connection with work projects to which they are assigned.”**

\*\*\*

Due to the fact that this was a week-long assignment, Rule 33(i) requires that employees assigned to road gangs, such as Track Extra Gangs and B&B Gangs, Machine Operators, ..., shall have preference to overtime work in relative seniority order in connection with work projects to which they are assigned. Further, Mr. Hanson, a junior B&B employee, was not assigned a flagging position in the area. At the time of the Claim, Claimant was assigned to the area as a flagging foreman.

Rule 33 is specific concerning assignment of overtime in seniority order in connection with work projects to which they are assigned. In this case, it is undisputed that the Claimant was the senior employee. As such, the Claimant should have received the overtime work under the clear and unambiguous terms of the Agreement.

**AWARD**

Claim sustained in accordance with the Findings.

**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 28<sup>th</sup> day of March 2024.