

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45245  
Docket No. MW-46766  
24-3-NRAB-00003-210325**

**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 employee J. Collier and C. Engles to perform overtime service repairing a stripped joint at or near Mile Post 451 on the main track on the Thayer South Subdivision on December 3, 2019 and continuing into December 4, 2019 instead of calling and assigning employees J. Norris and K. Coleman thereto (System File 2600-SL33-1996/14-20-0063 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Norris and K. Coleman shall now each be paid five (5) hours’ overtime at the Claimants’ appropriate 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 Organization asserts that the Carrier violated the agreement when it failed to employ Claimants J Norris and K Coleman to perform overtime service repairing a stripped joint at or near Mile Post 451 on the main track on the Thayer South Subdivision on December 3, 2019, and continuing into December 4, 2019.**

**The Carrier asserts that because of a service interruption caused by a stripped joint requiring immediate attention to prevent train delays it called in the closest employees to perform repairs on the damaged track. Claimant Norris, a Foreman, was not called in because another Foreman was located closer to the damaged track. The Carrier admits that it called in the less senior employee due to the emergency situation. Claimant Coleman, a truck driver was not called in because there was no need for a truck driver on the job.**

**This Board is cognizant that in emergencies the Carrier is granted greater latitude in the assignment of workforces. Third Division Awards 36982, 20527, 36982. However, the scarcity of evidence before this Board leads it to the conclusion that the Carrier's purported emergency is without merit. The Carrier failed to submit evidence of a service interruption necessitated by the repair. As a result, Rule 33(i), Overtime Service, applies. 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."**

**\*\*\***

Rule 33(i) specifies the assignment of overtime in seniority order in connection with work projects to which they are assigned. In this case, it is undisputed that Claimant Norris was the senior employee and entitled to the overtime work under the clear and unambiguous terms of the Agreement. As to Claimant Norris, the claim is sustained.

Claimant Coleman's claim is dismissed based on the evidence that there was no need for a truck driver at the job site.

**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.