

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45331
Docket No. MW-47734
25-3-NRAB-00003-230098**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

PARTIES TO DISPUTE: (
(Illinois Central Railroad Company (IC)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on October 1, 2020, the Carrier allowed junior employee J. Cordova to perform overtime work operating a rental backhoe on the Matteson Subdivision in New Lenox, Illinois at Mile Post 9.4 instead of assigning the senior incumbent Ms. R. Thompson (System File C 12 8 20/IC-BMWED-2020-00064 ICE)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Thompson shall now ‘. . . be allowed a total of Six (6) hours, at her time and one-half rate of \$49.59 for a total overtime of \$297.54’ (Emphasis in original).”**

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 R. Thompson established and holds seniority in the Carrier's Maintenance of way Department. During the time relevant to this dispute, she was headquartered at and around Joliet, Illinois with a Group B Machine Operator seniority date of April 15, 2002, working under the supervision of J. Gutierrez.

On the claim date in question, October 1, 2020, the Organization asserts that Carrier violated Rule 25(c) the Overtime provision of the Agreement when it assigned employee Ms. J. Cordova junior in seniority to the Claimant to perform overtime work operating a rental backhoe on the Matteson Subdivision in New Lenox, Illinois at Mile Post 9.4.

Rule 25 (c) reads in whole as follows:

Where Overtime work is needed to be performed prior to continuous with or following a regular assignment or on a rest day or holiday, such overtime will accrue to the incumbent of the position who would normally be assigned to perform such work.

The undisputed record evidence reflects the following:

- During the time relevant to this dispute, both the Claimant and Cordova were headquartered at and around Joliet, Illinois with a Group B Machine Operator classification.
- Both the Claimant and Cordova worked under the supervision of track supervisor Jose Gutierrez.
- The Claimant possessed greater seniority over employee Cordova as the Claimant's Group B Machine Operator seniority date is 4/15/2002, whereas, Cordova's Group B Machine Operator seniority date is 3/31/2003.
- On the claim date of October 1, 2020, the Claimant was assigned as a machine operator and commenced her shift in accord with her regular schedule operating the backhoe in question.

- Sometime prior to 3:30 PM, the backhoe was down for repair to a hose or hoses. At around 3:30 PM, the repair to the backhoe was completed, as evidenced by an entry on Carrier's business record titled "Daily Maintenance Log" on the claim date.
- The Claimant normally and regularly performed overtime work operating the subject backhoe on the Matteson Subdivision.
- The Carrier did assign the overtime work in question to operate the Backhoe to Cordova and Cordova did perform said work.

The record evidence reflects that what is in dispute herein is as follows:

- Carrier asserts, according to supervisor Jose Gutierrez, that after the backhoe was back in operation, the Claimant was offered the overtime assignment to continue to operate the backhoe immediately after her shift ended but, instead, she elected to decline the overtime assignment and leave work at the end of her tour of duty.
- The Organization maintains the overtime work was not offered to the Claimant as Carrier instructed her to leave the repaired backhoe at the location the repair work occurred and assigned her instead to a different location to operate a dump truck for the remainder of her shift.
- The Organization further asserts that upon completing her shift, the Claimant left work and Carrier then assigned the junior employee, Cordova to operate the backhoe resulting in her working the six (6) hours of overtime that is the subject of this claim.

In support of its position, the Organization provided a written statement from employee A. Lieberman, the Mechanic who performed the repair work to the backhoe in question which reads in its entirety as follows:

To whom it may concern,

On October 1st 2020 I spoke with Ronda Thompson at 1530 after finishing repairs on backhoe CN40913. Upon finishing hose repairs the machine was left under the cass street bridge in Joliet, Illinois. At this point she

informed me she would like to take the machine to continue to work but was instructed to leave the machine there and complete her end of shift.

Sincerely,
Andrew Lieberman

Subsequent to receipt of this letter, the Organization's General Chairman, Rolando Del Muro, Elgin, Joliet & Eastern System Division contacted Lieberman by email for purposes of clarification regarding his written statement. With regard to the first inquiry relating to the length of time the backhoe was down on the claim date, Lieberman related in an email response, he was called sometime after lunch to repair the backhoe and when he arrived to where the backhoe was located, the Claimant was operating the machine. After he arrived at the location, Lieberman recalled that someone picked her up and, as a result, she was not present at the location during the time he repaired the machine. Lieberman further noted he did not know what the Claimant was doing during the time he was working on the backhoe. Upon completion of the repair work, Lieberman asserted he called the Claimant on the phone at 1530 and informed her the repairs had been completed. With regard to the second inquiry, Muro asked Lieberman if he had witnessed any conversation between the Claimant and Supervisor Gutierrez where Gutierrez instructed her to go home as opposed to the Claimant just informing him that Gutierrez had instructed her to go home. Lieberman responded that he had not witnessed any other conversations.

Based upon a thorough review of the record evidence we find that Mechanic Lieberman's letter establishes without doubt that up until the time-of-day repairs were made to the backhoe, the Claimant was the employee that had been operating the machine. Moreover, we find puzzling that after repairs were performed to the backhoe that Carrier ordered the Claimant to leave the machine at the location of the repair and then reassigned her for the remainder of her shift to operate a dump truck. We further find improbable given absolutely no persuasive rationale as to why the Claimant would turn down an offer by Carrier to work the overtime assignment to continue operating the backhoe after her regular tour of duty ended as she regularly and willingly performed such overtime assignments at Joliet in the past. Given the obvious confusion surrounding the respective accounts of what transpired on the claim date, we further determine this entire case comes down to choosing between a "he said, she said" situation. Faced with such a situation, we determine to give

Claimant the benefit of doubt based upon her adamant declaration that Carrier had not offered her the overtime assignment but rather had instructed her to complete the balance of her tour of duty by operating the dump truck. Given her superior seniority status over Cordova, we find Carrier was obligated by Rule 25(c) to have assigned the overtime work in question to the Claimant. Having so ruled, the Claimant is entitled to be compensated for the six (6) hours of overtime she was deprived of the opportunity to work.

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 31st day of October 2024.