

**BEFORE
PUBLIC BOARD No. 7100**

**Award No. 14
Case No. 14**

**BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES**

VS.

UNION PACIFIC RAILROAD COMPANY

**) PARTIES TO
) DISPUTE
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STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

Appeal by the Organization on behalf of G. M. Donovan, P.J. Arellano and E.E. Solano("the Claimants") regarding the Carrier's decision on April 11 and April 12, 2001¹, to assign overtime work to junior Concrete Tie Gang employees J.D. Rivera, M.A. Perales and T.D. Galavez ("the Junior employees") at Denman, Nebraska, on the Maryville Subdivision, instead of assigning the overtime work to the Claimants. As a remedy, the Organization asks the Board to compensate the Claimants for twenty (20) hours of time and one-half rate of pay at the system laborers rate of pay as compensation for the loss of work opportunity.

FINDINGS:

Claimants hold seniority on various classes within the Track Subdepartment. Both Claimants and the Junior employees were assigned to the Concrete Production Crew which consists of approximately 180 employees assigned to various gangs on the Maryville subdivision. Each of the gangs has a Foreman represented by the Organization. During the dates in question, both Claimants and the Junior employees were assigned to system gang laborer positions, which are among the several gangs

¹ All dates herein referred to the year 2001 unless otherwise specified.

working in combination in the Concrete Production Crew. The Claimants were assigned to Gang 8573 and the Junior employees to Gang 8579. The Claimants were supervised by Foreman M.L. Fernau. From April 10 through April 12, the overtime work in dispute was performed during the rest days of the Concrete Tie Production Crew on the Maryville Subdivision.

The Organization argues on Wednesday, April 11, the Claimants reported to Denman, Nebraska, for the overtime work in dispute. However, without the Claimants knowledge, the location for the overtime work was changed to Hayland, Nebraska. Thereafter, the Claimants learned the overtime work was being performed in Hayland, Nebraska. On Thursday, April 12, the Claimants reported to Hayland, Nebraska to perform the overtime work in dispute. However, according to the Organization, the Claimants were informed by Foreman M. Hill they would not be allowed to perform the overtime work because they had not worked on the overtime project the previous date. The Organization asserts the Claimants were qualified and available to perform the overtime work; and were senior to the employees who were assigned to the overtime. It contends the Carrier violated Rules 4 and 26(h) of the Agreement, by failing and refusing to assign the Claimants to the overtime work in dispute.

RULE 4- SENIORITY GROUPS AND CLASSES WILL BE
AS FOLLOWS:

TRACK SUBDEPARTMENT

- | | | |
|----------|-----|---------------------------------|
| Group 19 | (a) | System Extra Gang Foreman |
| | (b) | System Asst. Extra Gang Foreman |
| | (c) | System Track Machine Operator |
| | (d) | System Truck Operator/Bus |
| | (e) | System Extra Gang Laborer |

RULE 26- WORK WEEK

(h) WORK ON UNASSIGNED DAYS-

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

The Organization asserts the Claimants were the senior regular employees and the overtime assigned should have been assigned to them in accordance with Rule 26(h) of the Agreement. The Organization concedes the Claimants did not report for the overtime work on April 9 and April 10. However, it maintains the Claimants did report to work on April 11 and thus, should have been then assigned the overtime work. Rather than assigning the Claimants, it argues, Carrier assigned the Junior employees to work a total of twenty (20) hours of overtime. Further, the Organization refutes Carrier's assertion the overtime was not assigned to the Claimants because they did not indicate their desire to work the planned overtime work. In this regard, the Organization asserts such circumstance does not serve to abrogate the seniority provision of the Agreement. Therefore, the Organization asks the Board to sustain the claim based upon the Claimants seniority and to compensate them for the loss of work opportunity.

Carrier, on the other hand, argues the various foremen who supervised the gangs of the Concrete Tie Production Crew requested volunteers for the overtime work for April 10, 11 and 12 in lieu of assigning mandatory overtime. Carrier further claims the foremen were instructed by their supervisors the canvassing for volunteers needed to be

completed by April 7th, which was the last scheduled work day of the gangs. Claimants' foreman requested them to volunteer for the overtime work. However, Carrier asserts, none of the Claimants volunteered for the overtime work in dispute. Carrier maintains when the canvassing was completed, the overtime was assigned to the volunteers in seniority order. Carrier also asserts the employees worked their regular assignment April 1 to April 7th; and on April 8th the employees observed Good Friday. It also maintains April 9th (contrary to the Organization's claim) was a rest day and thus, the employees did not work their regular assignment or overtime work. Thereafter, according to Carrier, the overtime work was performed on April 10, 11 and 12. Carrier contends if the Claimant would have volunteered, they would have been instructed to report to work at Hayland, Nebraska. Instead, Claimants, without previously volunteering for work, reported on April 11, to Denman, Nebraska.

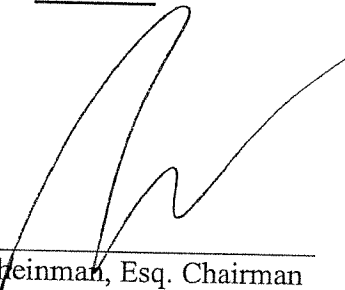
Essentially, Carrier argues it offered the Claimants the opportunity to work overtime and none of them indicated in a timely manner their desire to work the overtime assignment. It argues the Organization never disputed the assertion the opportunity for overtime work was offered to Claimants nor did it dispute the Claimants never indicated their desire to work the overtime prior to April 11. In these circumstances, the Claimants have no contractual right to displace the employees who volunteered for the overtime work even if they are less senior employees. Therefore, Carrier asks the Board to deny the Claim in this case.

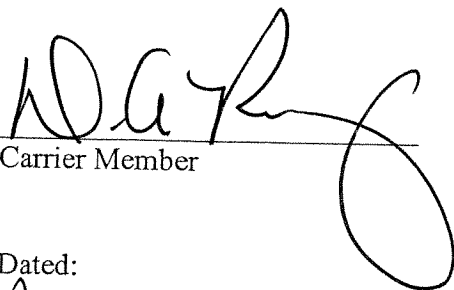
After reviewing the record facts, the Board finds the grievance must be denied. This Division has concluded in numerous cases when a material statement made by one party is not disputed by the other party, the material statements are accepted as an


established fact. Here, the Organization never disputed during the on property handling of the Claim, the Carrier's assertion the Concrete Tie Production Crew, including the Claimants, were asked to volunteer for the overtime work in dispute and the assertion the Claimants never indicated their desire to work the overtime prior to April 11. Therefore, the record shows the Claimants were given the opportunity to volunteer for overtime work and they all failed to indicate their willingness and availability for the overtime work in a timely manner. While this Board supports the sanctity of seniority, the Board finds no basis for the Organization to invoke the seniority provision in this case. Accordingly, the Claim is denied.

AWARD

Claim denied.



Martin F. Scheinman, Esq. Chairman
Neutral Member

Carrier Member

Organization Member

Dated:

March 4, 2009

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