

**PUBLIC LAW BOARD NO. 7101
CASE NO. 5**

PARTIES TO THE DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(and
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call regularly assigned Gang 3627 employees M. Farley, E. Scott, G. Jackson, and M. Taylor for overtime service (replacing rail) on the Geneva Subdivision on March 22, 2003 and instead assigned extra employees to perform said work (System File 9SW-2042T/1365366 CNW)
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Farley, E. Scott, G. Jackson and M. Taylor shall now each be compensated for twelve (12) hours' of pay at their respective time and one-half rates of pay.

The Carrier has declined this claim."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement; this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the Hearing held.

Claimant M. Farley, E. Scott, G. Jackson, and M. Taylor have established and hold seniority within the Maintenance of Way and Structures Department. On the date in question, Claimants were regularly assigned to Gang 3627. The Organization contends that on March 22, 2003, the Carrier allegedly assigned 13 employees to assist Gangs 3500 and 3504 to replace rail on the Carrier's Geneva Subdivision. Each of the 13 extra employees worked a total of 12 hours at the

overtime rate. It is uncontested that Claimants were available for duty on the Claim date, fully qualified and willing to perform the relevant work, but were not given the opportunity by the Carrier.

The Organization submitted a Claim contending that the Carrier had violated the Agreement when the Carrier did not select Claimants to work on March 22 to aid in the replacement of the rail. According to the Organization, it was improper to assign the extra employees when Claimants were interested in the work and should have been called. As a result of this alleged violation, the Chairman requests that Claimants be compensated for 12 hours of work at their respective overtime rates.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that pursuant to Rule 23L, Claimants were not entitled to said work. According to the Carrier, it is uncontested that the Gangs 3500 and 3504 were regularly assigned to the work at issue. Claimants were assigned to Gang 3627. Rule 23L mandates that the employees regularly assigned to the work shall therefore be assigned the extra work. In this case, the Gangs 3500 and 3504 were regularly assigned to the work in question and therefore, the work was properly assigned to these Gangs and no remedy is appropriate.

The language of Rule 23L is as follows:

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

In the instant case, this Board cannot find that the Organization has been able to meet its burden of proof to show that Gangs 3500 and 3504 were not the regularly assigned employees. Therefore, the work was properly assigned to those Gangs. Other referees have similarly held:

... From the Rule, it is clear that overtime is not assigned in accordance with strict seniority guidelines, but who is doing the work on a regular basis on the assigned work days. This is supported by Third Division Awards 28500, 29097, 29795.

Third Division Award No. 31294 (Hicks, Referee)

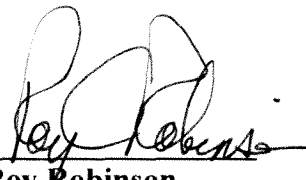
Thus, after a review of all the evidence, there has been no showing that the Carrier erred when it did not select Claimants to replace rail on March 22, 2003. The Claim is denied.

AWARD

Claim denied.


Steven M. Bierig
Chairperson and Neutral Member


Dominic Ring
Carrier Member


Roy Robinson
Organization Member

Dated at Chicago, Illinois this 2nd day of FEB 2009.