

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE**

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 68

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

1. The Carrier violated Rule 25(c) of the Agreement when it failed to call and assign Claimants R. Boyd, K. Waller and J. Fuller, who were all regularly assigned to positions on Section Gang ICCM-B01 and instead called and assigned employees K. Ard and H. Wallace from Section Gang ICCM-D01 and Mobile Welder E. Moak to repair a broken rail on Gang ICCM-B01's assigned territory, located at Mile Post 845.8 in Amite, Louisiana on the McComb Subdivision (System File S.C091908.0/IC-BMWED-2008-00021).
2. As a consequence of the violation outlined in Part 1 above, Mr. R. Boyd, K. Waller and J. Fuller should each be allowed five (5) hours' pay at their respective time and one-half rates of pay."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' Agreement by assigning employees who were not members of Gang ICCM-B01 to repair broken rail on that Gang's territory, instead of assigning the Claimants, all of whom were regularly assigned to Gang ICCM-B01, to perform the work. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue accrued to the Claimants as the regular employees normally assigned to work at the location involved, because the Carrier's defenses are without merit or substance, and because the requested remedy is proper. The Carrier contends

that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, and because there has been no violation of Rule 25(c) of the Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to call the Claimants for overtime work on August 22, 2008. Therefore, the claim must be denied.

The Organization mistakenly indicates that the employees who actually performed the work were "called out" to repair the broken rail. However, the record reveals that the individuals who performed the work in question were actually contacted while repairing other broken rails and were instructed to proceed to the new location to repair a broken rail there that was holding a train up and which was approximately five miles from the initial repair location.

The employees who were called to perform the work did receive overtime pay for their performance, but they were simply repositioned and were not "called out" as the Organization charges in its claim. They were still at work. The record also reveals that all of the employees involved were southern region employees capable of performing the work. Although the Claimants were more senior, the Organization has not provided any basis for their position that the off-duty employees should have called back to work the overtime that was performed in this case. The train was being held up and a crew was


available five miles away. The Carrier merely reassigned that working crew.

Rule 25 requires the Carrier to offer the overtime to incumbents who would normally be assigned to perform that work. In this case, the Carrier assigned the work to incumbents who are normally assigned to perform that work, and who were on duty at the time, nearby the broken rail while a train was being held up for the repair. There is simply no requirement in the rules for the Carrier to call out the Claimants, who were not working at the time, for the five hours of overtime that was performed by the employees who were on duty and who were normally assigned that type of work.

For all the above reasons, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: MARCH 31, 2011



ORGANIZATION MEMBER

DATED: MARCH 31, 2011