

PUBLIC LAW BOARD 6430

Award No. 9
Case No. 9

PARTIES TO 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 assigned junior employee V. L. Warren to perform overtime service (foreman duties) on April 21, 22, 23, 24, 27, 28, 29, May 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 28, 29, June 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17 and 18, 1998 in the vicinity of Topeka, Kansas to the exclusion of senior and available Foreman N. Yazzie (System File W-9835-164/1143187).
2. As a consequence of the violation referred to in Part (1) above, Foreman N. Yazzie shall now be compensated for all overtime service improperly assigned to junior employee V. L. Warren during the claim period at his respective time and one-half rate of pay.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

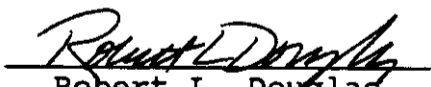
The record indicates that the Claimant, who possessed greater seniority than the employee who performed the disputed overtime work, repeatedly had performed the relevant foreman duties on a

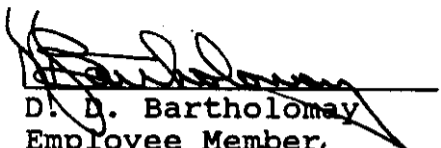
straight-time basis during the applicable period of time. The Carrier therefore necessarily had concluded that the Claimant possessed the necessary qualifications to perform such work on a straight-time basis. As a result, the Carrier's alleged concern about the need for the Claimant to possess a valid credit card failed to provide a proper basis to disqualify the Claimant from working the disputed overtime under the specific circumstances set forth in the record.

With respect to a remedy, the Claimant shall be compensated for all overtime that the junior employee worked on dates that the Claimant did not actually work overtime. Thus the Claimant shall not receive any additional overtime payments for any of the dates covered by the Claim that the Claimant had worked on an overtime basis in a different capacity.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


D. A. Ring
Carrier Member

Dated: 9/9/2002