

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14034  
Docket No. 13910  
10-2-NRAB-00002-090025**

**The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(International Brotherhood of Electrical Workers**  
**(Metro North Commuter Railroad**

**STATEMENT OF CLAIM:**

- “1. That on November 1, 2008, at Danbury Yard, CT, MTA Metro-North violated Rule 4-B-2(d) of the Controlling Agreement when it assigned Harmon Shop Electrical Worker T. Kearns to work overtime at Danbury Yard; whereby, Electrical Worker Kearns was assigned to perform service as a train rider on the Metro-North Excursion Train which originated out of Danbury, CT between the hours of 10:30 AM to 4:30 PM. Pursuant to Rule 4-B-2(d) the overtime assignment on the Danbury Excursion Train should have been provided to Danbury CT Electrical Worker D. Thill.**
- 2. That accordingly, due to Metro-North’s violation of Rule 4-B-2(d) of the Controlling Agreement, Claimant D. Thill is to be compensated six (6) hours at the overtime rate of pay. The amount claimed represents a loss of earnings opportunity Claimant would have earned had the Agreement not been violated.”**

**FINDINGS:**

**The Second 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.**

**According to the record before the Board, the Claimant was a covered Electrical Worker headquartered at Danbury, Connecticut, at the time of the events giving rise to this claim. On the morning of November 1, 2008, the Claimant stood next in line for overtime assignments originating out of Danbury provided he was qualified. The Carrier assigned overtime consisting of serving as a Train Rider from 10:30 A.M. to 4:30 P.M. protecting an Excursion Train originating at Danbury to Electrical Worker T. Kearns, who was headquartered at Harmon, New York.**

**The Organization takes the position that in doing so, the Carrier was in violation of the Danbury, Connecticut Local Overtime Agreement which gives Danbury personnel preference to overtime assignments at that location.**

**The Carrier defends its action on grounds that the overtime at issue was distributed in accordance with contractual guidelines, which affords it the latitude to evaluate qualifications in making overtime determinations. In this instance, it asserts, the Claimant lacked the level of qualifications required to protect and dispatch an Excursion Train.**

**The terms of Rule 4-B-2(d) applicable to the dispute are as follows:**

**“In the assignment of employees to work overtime, due consideration shall be given to:**

- 1. Their qualifications**
- 2. Local Agreements covering the distribution of overtime**

- 3. The regularity of their service on regular workdays, so that employees who display a clear pattern of absenteeism on regular workdays shall not be entitled to share in the work distributed.”**

**Rule 5-E-1(b) states:**

**“Records will be kept of overtime worked and men called, with the purpose in view of distributing the overtime equally among the employees in so far as their qualifications will permit subject to agreement between the local officer and the local union representative.”**

**It is undisputed that the Excursion Train at the center of the dispute was a special charter train operated by the Carrier to take tour groups on short excursions in private rail cars operated by Metro North for customers interested in viewing autumn foliage in the area. Accordingly, the Carrier asserts that, consistent with its operating history, “the responsibility . . . of protecting ‘special trains’ has always been the responsibility of the Harmon Diesel & Electric Shop of the Mechanical Department . . . no one from any other local, terminal, yard has ever ridden this type [of] trains.” Because the power employed was a Genesis locomotive, and because the Claimant lacked extensive experience with that type of engine, he did not have the same level of expertise required to trouble shoot the locomotive as the Electricians at Harmon, where such engines are maintained. Should a fault develop enroute that required starting the train, the Carrier argues, the Claimant could not have handled the situation safely and efficiently.**

**In response, the Organization contends that simply because the Carrier assigns maintenance work to various locations does not mean it is entitled to ignore its obligations under Local Overtime Agreements. Moreover, it argues, contrary to management’s assertions here, the Claimant was qualified to perform the work at issue, having served as Train Rider in the past “on the identical type of rolling stock equipment as was used in the instant case.” Those qualifications, it maintains, are well documented both on his job description and the summary of his training in evidence.**

**Upon careful review of the record, it seems apparent that the claim raises an age-old, vexatious question: how to weigh the rights to work opportunities of senior**

employees at the location against management's responsibility to manage the operation of the railroad so as to protect the best interests of employees, the public and the corporation alike. As is often the case, competing claims of "qualified" and "better qualified" pit one employee against another and put the personal judgments of supervisory personnel on the anvil. Invariably, as in this instance, the results will be fact-intensive.

The Agreement speaks to distributing overtime with "due consideration" to the qualifications of employees. There is no suggestion in this record that management failed to give account to the relative ability of the Danbury and Harmon personnel. Was its determination unreasonable or arbitrary? It sets forth in its denial letter of December 22, 2008 a detailed recitation of the reasons it relied upon to send Brewster mechanics to Danbury to monitor the dispatch of the special train from Danbury to Kent, Connecticut, and its reasons for needing what it considered a qualified Electrician to ride that train. While it asserts that the Claimant may have been qualified to do DCMI and minor repair to coaches and engines in service on the Danbury branch, that did not qualify him to troubleshoot the Genesis locomotive beyond a basic level. There is nothing arbitrary or capricious about that assessment. It is countered merely by an unsupported assertion that the Claimant has worked such assignments in the past, a fact on which objective proof was easily accessible, but not offered.

In the view of the Board, the arbitral authority offered by both sides reflects our assessment that the question of whether the employer's bypass offended the Agreement is entirely dependent upon the facts presented. Thus, for example, in Special Board of Adjustment No. 934, Case 532, while noting that "arbitrators have consistently upheld the principle that management shall determine the qualifications of its employees," the IBEW's claim on behalf of an Electrical Worker with maintenance seniority who was denied a bid to attend a certain maintenance training class was sustained, apparently on grounds that management had discriminated in its selection for training. Conversely, in SBA No. 934, Case 430, the Carrier was successful in demonstrating that the Group HVAC Electricians possessed superior qualifications for the disputed work than did the claimants.

In this instance, the Carrier has also satisfied its burden of establishing its affirmative defense, persuasively demonstrating that the Harmon Electricians had

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**superior qualifications for the specialized work in question. That showing satisfies the Board that no Rule 4-B-2(d) violation has been demonstrated.**

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**Dated at Chicago, Illinois, this 3rd day of November 2010.**