

The Third Division consisted of the regular members and in addition Referee Edward L. **Suntrup** when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned Repairman J. O'Connell to perform overtime service on August 27 and 28 and September 10 and 11, 1983, instead of Repairman H. W. Lake (System File NEC-BMWE-SD-830).

(2) Claimant H. W. Lake shall be allowed seventy-four and one-half (74 1/2) hours of pay at his overtime rate."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

On October 25, 1983, claims were filed on behalf of the Claimant for six dates in August and September of **that** year on the grounds that the Carrier was in violation of **Agreement** Rule 55(a) when it used another Maintenance of Way employee in lieu of the Claimant to do service and repair work. It was **subsequently** recognized that the claims for two of the dates had not been filed within the required time-limits and these claims were dropped.

The instant case centers on claims for the four remaining dates. According to the Claimant he had been working with a gang that performed **right-of-way** clean-up work which was headquartered at Lancaster, Pennsylvania. when the gang was called out to perform right-of-way clean-up work on an overtime basis, it is his position that he, and not another Maintenance of Way employee assigned at **Downingtown**, Pennsylvania, should have been called to do **the** work.

In response to the claim the Division Engineer replied that the gang was "...performing work on the **Downingtown** portion (M.P. 21 - M.P. 45) of the **Paoli** subdivision." The work therefore, rightfully belonged to the other employee, and not the Claimant, since the former was the senior district MW Repairman in that area." The Carrier further clarifies its reasons for denying the claim in a letter to the Organization's General Chairman **written** by the Assistant Chief Engineer of Maintenance of Way and Structures. In that letter he states:

"...(C)areful consideration of all the circumstances surrounding this **case...(and) (o)ur** review of the job advertisements for the positions which were held by the Claimant and (his fellow employee who was assigned the **overtime**) on the dates in question reveals that both individuals were holding M/W Repairman positions with identical duties and **qualifications...accordingly**, the senior, qualified M/W Repairman nearest the work **location...was utilized** for the overtime assignment."

Rule 55(a) reads in pertinent part:

PREFERENCE FOR OVERTIME WORK

"Employees residing at or near their headquarters will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority."

In cases such as this it is incumbent upon the Claimant, as moving party, to show by means of preponderance of evidence that the provision of the Rule ~~at~~ was violated (Second Division Awards 5524, 6054; Third Division Awards 15670, 25575). A close study of the facts of record fails to persuade the Board that the Claimant has met that burden. The Claimant does not present substantial evidence that he had any exclusive right to the work in question. Both he, and the employee assigned to the overtime by the Carrier, were area repairmen who were the only employees assigned to their respective gangs. The Claimant's Lancaster, Pennsylvania headquartered gang was Gang H-062. The **Downingtown**, Pennsylvania headquartered gang was Gang H-042. The work was done in the **Downingtown** area and was properly assigned, therefore, by the Carrier to the repairman in that area. Although it is not of important **evidentiary** consequence in this case, since it is a question of two different **gangs**, the Claimant was factually junior to the employee assigned to the work in question on the District MW Repairmen roster. The clean up work "...ordinarily and customarily" done in the **Downingtown** area was done, therefore, by the repairman on the gang assigned to that area. This was not the Claimant. On merits, this claim cannot be sustained.

Other questions raised in this case relative to the propriety of the relief requested need not be addressed by the Board in view of its denial of the claim on merits.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1988.