

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Welder Foreman F. Bradley to perform overtime work on December 4, 1983 instead of using Contractor Protection Gang Foreman M. Butler who was available and willing to perform that overtime work (System File NEC-BMWE-SD-829).

(2) Claimant M. Butler shall be allowed eight (8) hours of pay at his time and one-half 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.

At the time this dispute arose, Claimant held seniority as a Foreman and was regularly assigned as a result of a bid to a Contractor Protection Gang. Claimant's designated rest days were Saturday and Sunday.

On Sunday evening, December 4, 1983, the Carrier assigned Welding Foreman F. Bradley (who was working) rather than Claimant (who was off) to perform eight hours of contractor protection work. Claimant asserts that he should have been called to perform the work and seeks compensation for eight hours at the time and one-half rate. The record further indicates that Bradley also performed protection work within the scope of his regular duties.

Initially, the Carrier's argument that the Claim is defective since no rule was cited is without merit. Although the Claim did not cite a rule, the record establishes that the parties fully understood the issues to concern the alleged violation of Rule 55. In its initial response to the Claim and thereafter, the Carrier cited Rule 55 as the basis for its denial. Moreover, during handling on the property, the Organization made specific references to the Rules it contended were violated. The Carrier cannot now assert that the Claim was defective for lack of a rule citation. See Third Division Award 25559.

With respect to the merits, we do not believe that the Organization has met its burden and we must therefore deny the Claim. First, Rule 55 states:

"PREFERENCE FOR OVERTIME WORK

(a) 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."

Under this Agreement, flagging in and of itself is not a position but is a duty performed by numerous different positions. Third Division Award 26385. The fact that Bradley performed protection work in the past underscores that conclusion. While Claimant's holding the bid position of "Foreman - Contractor Protection" adds strength to the Organization's argument under Rule 55, we believe that the Organization's burden in this case nevertheless requires more of a showing to require the Carrier to bring in an employee on his day off and to defeat the fact that "[t]here is nothing in the Agreement which cites in clear and unambiguous language the position of flagging" and that "the Carrier has the managerial right to assign various employees to accomplish needed tasks at its direction unless restricted by Agreement." Award 26385, supra. See also, Award 25559, supra, Third Division Award 25128. A key factor in the resolution of this case is that in the past, Bradley has performed protection duties as part of his job. Thus, although Claimant held the title of his assigned bid job, the record requires a conclusion that the Carrier assigned the work to an employee on Claimant's day off who has performed the disputed work as part of his normal tour of duty and no contractual language has been pointed to that prohibits such an assignment.

Second, and for similar reasons, we do not find a violation of Rule 56 which states that "An employee will not be required to suspend work, after starting any daily assigned working period, for the purpose of absorbing overtime." Since the record demonstrates that Bradley performed the work at issue as part of his normal duties and there is nothing in the record to show that Bradley was required to suspend work after the commencement of his duties to perform the disputed work, we are not satisfied that an absorption of overtime situation within the meaning of Rule 56 has been presented.

Form 1  
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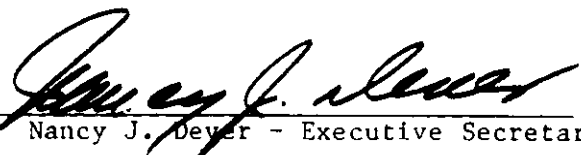
Award No. 27072  
Docket No. MW-26548  
88-3-85-3-291

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

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