

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 a junior foreman to perform overtime service on March 27, 31, April 1, 2, 3, 5, 6, 7, 9, 10, 12 and 13, 1984, instead of using Foreman E. Smith, who was senior, available and willing to perform that service (System File NEC-BMWE-SD-968).

(2) Foreman E. Smith shall be allowed ninety-seven (97) 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.

The Claimant and another employee both hold positions as Track Foremen in Gang A-422. Claimant is the senior of the two employees. On the dates cited in the claim, the Claimant was assigned Foreman duties with the gang, while the other Foreman was assigned as pilot for outside contracting forces, some 52 miles away. The pilot assignment included working into overtime hours. There is no dispute that the two assignments were both within the duties performed by Foremen.

The Organization contends that the Claimant, based on his seniority, should have been assigned to the overtime or, in the alternative, should have been assigned the piloting task in its entirety because of an assumption that overtime work would be required. The Organization relies on Rule 55, which states in pertinent part as follows:

"RULE 55

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."

Such Rule, however, does not support the view that seniority status must be followed simply because work during regular hours may or may not lead to completion during overtime. This is in contrast, of course, to situations where employees are specifically called for a discrete overtime or rest day assignment. Further, Rule 55 does not operate to impair the practice of permitting employees to complete a regular assignment when overtime is therewith required. This view is supported by Third Division Award 26385, which states:

"The Carrier ... noted that Rule 55 had historically been applied to allow Carrier to proceed as herein disputed. Carrier was permitted to assign overtime work to employees who were doing such work in their normal tour of duty. When Claimant had been regularly assigned the job as a daily assignment, he had been kept on such job when overtime was required. Similarly when another employee was assigned the job (junior to the Claimant), that employee continued on any overtime needed to complete his regular assignment. The Carrier argued that 'there is no provision in the current Agreement which requires that the Carrier assign employees to a work assignment on the basis of whether that assignment will require that the employees work overtime....

The burden of proof lies with the Organization. It has failed to sustain its burden. This ruling is consistent with past Awards which hold that the Carrier has the managerial right to assign various employees to accomplish needed tasks at its direction unless restricted by Agreement (Third Division Award 25128). Finding no such restriction herein, the Claim is denied."

Form 1
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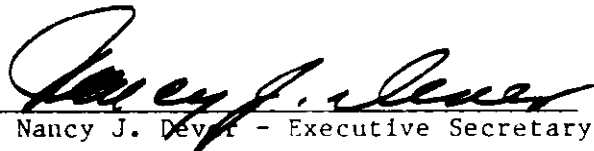
Award No. 27090
Docket No. MW-26808
88-3-85-3-570

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.