

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 junior Foreman C. Gaddy instead of Foreman J. E. Groff to perform overtime service at Perryville, Maryland on July 16, 17, 18, 21, 23, 24, 25 and 26, 1987 (System File NEC-BMWE-SD-2041).

(2) The Carrier also violated the Agreement when it assigned junior Foreman C. Berry instead of Foreman J. E. Groff to perform overtime service at Perryville, Maryland on July 18, 19, 22, 23 and 24, 1987 (System File NEC-BMWE-SD-2040).

(3) As a consequence of the violation referred to in Part (1) above, Mr. J. E. Groff shall be allowed seventy-five (75) hours of pay at the foreman's time and one-half rate.

(4) As a consequence of the violation referred to in Part (2) above, Mr. J. E. Groff shall receive forty-three and one-half (43.5) hours of pay at the foreman's 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 employe or employes involved in this dispute are respectively carrier and employes 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.

In the facts and circumstances of this Claim, the Organization argues that the Carrier violated the Agreement when it permitted two junior employees to perform overtime work in preference to the Claimant. The relevant Rule alleged to have been violated states:

"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."

In the case at bar, the Board finds no probative evidence that the work performed by the two junior employees was the type of work ordinarily and customarily performed by the Claimant. We have fully examined each assertion and found no factual evidence of support. The Carrier has denied that the Claimant's position of Foreman/Contractor Protection would have normally carried out the associated duties of the junior employees holding positions of Maintenance Foreman or the work herein deputed. Consequently, the assertions are unsupported and we find no contractual entitlement in the instant circumstances. The Claim is denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.