

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30446
Docket No. MW-28446
94-3-88-3-241

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 Employes
(
(National Railroad Passenger Corporation
((Amtrak) - Northeast Corridor

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

- (1) The Agreement was violated when the Carrier assigned Trackman T. Burns instead of Welder Helper D. A. Sands to perform overtime welding work on Gang H-092 from 3:00 p.m. through 11:00 p.m. on December 8, 1986 (System File NEC-BMWE-SD-1762).
- (2) As a consequence of the aforesaid violation, Welder Helper D. A. Sands 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 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.

Claimant holds seniority as a Welder Helper. At the relevant time, Claimant was regularly assigned to Gang H-092 headquartered at Downingtown, Pennsylvania, with hours of 7:00 A.M. to 3:00 P.M., weekends off.

According to Claimant, on December 8, 1986, he reported for his normal tour of duty at 7:00 A.M. as a Welder Helper. Track Supervisor B. R. Reading called him into the office and told him that he was assigning him to work the Assistant Foreman's job with Foreman M. Boyle, a Track Inspector, who rides a rail car from MP 21 to MP 45. Claimant told Reading that he thought there might be overtime in Claimant's Welder Helper job that day because of a rail job in Randor and that Claimant did not want to miss out on that overtime. According to Claimant, Reading assured him that there would be no overtime in Claimant's Welder Helper position and the Claimant was needed by Reading to work with the Track Inspector Boyle to cover the west end of the subdivision in case there was a problem because all of the other employees would be at the rail job at Randor and too far away to help. Claimant's Welder Helper position was filled that day by Trackman T. Burns, an employee junior to Claimant.

Further, according to Claimant, after completing his assignment as Assistant Foreman, he returned to headquarters at Downingtown at 3:00 P.M. and asked Reading if the junior employee Burns was going to work overtime in Claimant's Welder Helper position. Reading confirmed that the employees would be staying at the Randor job and Burns would be working overtime. Claimant requested to be allowed to go to the Randor job and work overtime as a Welder Helper. Reading denied Claimant's request and Claimant's replacement worked the overtime. Claim was filed for the lost overtime opportunity.

According to Reading, prior to December 8, 1986, Claimant requested to be assigned to the high rail inspection vehicle whenever possible. With respect to the overtime assignment on that date, Reading states that at the time Claimant was assigned to the Assistant Foreman's position, Reading did not expect that any Welder overtime would need to be performed by Claimant's Welder Helper position.

Initially, the Carrier asserts that the claim is procedurally flawed because of lack of specific Rule citations. That argument has previously been rejected. Third Division Award 25559.

With respect to the merits, it is settled that under Rule 55 the Carrier is "permitted to assign overtime work to employees who were doing such work in their normal tour of duty." Third Division Award 26385. See also, Third Division Award 27090. Thus, under ordinary circumstances, because the junior employee Burns who had replaced Claimant on December 8, 1986 worked the Welder Helper assignment at Randor during his normal tour, the Carrier could assign overtime attached to that assignment to Burns instead of Claimant.

But the difference here, according to the Organization, is that when Claimant asked Supervisor Reading on the morning of December 8, 1986 whether there would be overtime in Claimant's Welder Helper position that day, Claimant was told by Reading there would be none and, therefore, Claimant worked the Assistant Foreman's position relying to his detriment upon Reading's representation. However, close examination of the statements provided by Reading and Claimant do not support that argument. Reading states that "[a]t the time that Mr. Sands was assigned to the Assistant Foreman's position, I did not expect that any Welder Helper overtime would need to be performed by his Welder Helper position." Claimant's statement is not inconsistent with Reading's assertion. According to Claimant, he indicated to Reading that "I thought there might be overtime in my Welder-Helper's job that day ..." [emphasis added]. Thus, the record does not definitively establish that when Claimant was told to take the Assistant Foreman's job for the day that overtime was planned for the Welder Helper position normally occupied by him. That lack of a showing is significant for purposes of this case because we cannot say that this was a case of pre-planned overtime (see Third Division Awards 26416, 24235) or that Claimant was purposely misled by Reading to his detriment about overtime in the Welder Helper's position. Giving Claimant the benefit of the doubt, at most, his statement shows that any expectation of overtime on his behalf was speculative—"I thought there might be overtime in my Welder-Helper's job that day ..." [emphasis added]. Absent a showing that the overtime was pre-planned or that Claimant was misled to his detriment, this claim must be denied.

AWARD

Claim denied.

O R D E R

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 Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.