

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30660  
Docket No. MW-30682  
95-3-92-3-465

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 Agreement was violated when the Carrier assigned junior employees W. Sas, D. Matthews and E. Johnson to perform various hours of overtime service on September 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, October 1, 2, 3, 4, 5, 6, 8, 9, 10, 15, 16, 17, 18, and 19, 1990 (System File NEC-BMWE-SD-2881 AMT).
- (2) As a consequence of the aforesaid violation, Claimant W. Kiernan shall be allowed one hundred seventy-two and one-half (172 1/2) hours' pay at his then current pro rata rate of pay."

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 waived right of appearance at hearing thereon.

Claimant established and holds seniority as a Maintenance of Way Equipment Repairman and was headquartered at Milham, New Jersey. This dispute centers upon Carrier's failure to assign Claimant overtime service on the subject claim dates. The work at issue, performed by junior employees occurred at three locations: Sunnyside Yard, Queens, the tunnels of Penn Station, New York, and Hunter Yard, Newark, New Jersey.

The Organization submitted a claim, maintaining that the Claimant was the "senior, qualified employee, and was available" on the claim dates. The Organization premised its claim on Rule 55 (Preference for Overtime Work) of the Agreement. In its denial of the claim, Carrier did not challenge the fact that it made "no effort" to determine Claimant's availability to work overtime on the claim dates, nor did Carrier dispute that Claimant was the senior employee. Rather, Carrier predicated its denial on the fact that Claimant had "turned down opportunities to perform overtime service on prior occasions," and refused to work in the aforementioned locations because the neighborhoods around these locations have "unsavory reputations."

With regard to the junior employees, Carrier asserted that the work Mr. Johnson performed on October 19, 1990 was "not performed at one of these locations, or was continuous with his regular tour." Carrier further asserted that in both other cases, "Mr. Sas and Mr. Matthews were sent from their headquarters to remote locations," and that much of the time claimed for Mr. Sas was actually travel time continuous with his straight time assignment. Carrier submitted that Amtrak's "consistent and long-standing application of Rule 55" entitled Mr. Sas and Mr. Matthews to continue their assignment into overtime.

In subsequent correspondence Claimant maintained that he had refused overtime for a brief period of time due to his wife's illness. Claimant further stated that although he did not "like" to work in the aforementioned locations, he had done so on "numerous" occasions. In its initial denial of this claim Carrier stated that the Claimant had "consistently advised" that he was not interested in working overtime at Hunter Yard, Penn Station or Sunnyside Yard. However, Claimant submitted contrary information with regard to his overtime call record which Carrier did not effectively refute. The Claimant did refuse many overtime calls, but he did not decline all overtime calls.

While it is understandable that Carrier got "sick and tired" of calling the Claimant and getting frequent refusals, Carrier was not entitled to remove his name unilaterally from the call list. Carrier relied upon Second Division Award 10351 in which management sent certain individuals letters informing them that they were going to be removed from the call-out list because they had failed to accept calls on a "consistent basis and show no intention of accepting calls in the future." In this case, however, Carrier did not even put Claimant on notice that he was vulnerable to removal from the call list.

Rule 55 clearly requires that the senior employee should be called and a plain violation of Rule 55 has been proven. On that basis, this claim must be sustained. However, Carrier's argument that "at best" Rule 55 could only provide a basis for the 44 hours of work performed on Saturdays, September 15 and 29, and October 6, 1990, is persuasive. Therefore, Carrier is directed to compensate Claimant for 44 hours at the pro rata rate for September 15 and 29, and October 6, 1990.

AWARD

Claim sustained in accordance with the Findings.

.. ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.