

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35644
Docket No. MW-34459
01-3-98-3-85

The Third Division consisted of the regular members and in addition Referee **Margo** R. Newman 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 Agreement was violated when the Carrier improperly assigned Cabinet Maker K. Madeksiak to build platforms at the Darby Train Station on Sunday, September **29, 1996** instead of calling/assigning B&B Mechanic Foreman O. O’Connell (System **File NEC-BMWE-SD-3748 AMT**).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant O. O’Connell shall be allowed eleven (11) hours’ 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.

This claim protests the assignment of a Cabinet Maker to perform B&B Mechanic overtime work of building platforms at Darby Station rather than the Claimant, a B&B Mechanic Foreman. It involves the application and interpretation of Rule 55, Preference for Overtime Work, which provides, in pertinent part:

“(a) Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of seniority.”

The Organization contends that it was impermissible for the Carrier to call an employee off another roster before the entire craft working on the active roster has been called. In this case the Organization alleges that under Rule 55 the Carrier should have called B&B Mechanic Foremen, Assistant Foremen and Inspectors prior to calling Cabinet Makers, Welders, Plumbers etc. who are neither in the craft nor under the same Agreement. It asserts that the proper compensation for this missed overtime opportunity should be at the time and one-half rate of pay.

The Carrier argues that it properly applied the seniority provisions of Rule 55 by utilizing its normal procedure of first exhausting the roster of employees currently working in the class of work required for overtime, herein B&B Mechanics, and then calling employees according to their rank on the B&B Mechanic's roster, even if they are working out of class. In this case, the Carrier asserts that it exhausted the roster of active B&B Mechanics before calling employees in order of seniority on that roster, and it is undisputed that Cabinet Maker Madeksiak's roster number is 299 while the Claimant's is 352. It noted on the property that a Foreman was not needed on the claim date because a senior Foreman was already working on the job. The Carrier furnished proof that the work involved only six and one-half hours of overtime, and contends that the Organization failed to meet its burden of proving a violation of the Agreement. It also argues that the claim is excessive because the appropriate compensation for a lost overtime opportunity on this property is the pro rata rate.

A careful review of the record convinces the Board that the Carrier's position has merit. There is no dispute that B&B Foremen are on a different roster than B&B Mechanics, and that the class of work here involved was B&B Mechanics work. Rule 55 requires the Carrier to give preference for overtime work in order of seniority to employees who ordinarily and customarily perform the work in issue. Its focus is on the class of work involved. The Carrier properly complied with its obligations by first

exhausting the B&B Mechanic's roster for all employees actively working in that classification, and thereafter, giving preference to those B&B Mechanics working outside the class in order of seniority on the B&B Mechanic's roster. There is no requirement that rosters of active employees in the B&B Department unrelated to the type **of work** to be performed, e.g., the Foremen's roster, be exhausted prior to using the Mechanic's roster of inactive employees, as the Organization contends. The Carrier complied with its obligations under Rule 55 by assigning the overtime work in order of B&B Mechanic seniority as it appears on that roster. Because the Claimant admittedly had less Mechanic seniority than Madeksiak, no violation has been established.

AWARD

Claim denied.

ORDER

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 28th day of August, 2001.

LABOR MEMBER'S DISSENT
TO
AWARD 35644, DOCKET MW-34459
(Referee Newman)

The findings in this Award were based on unsupported assertions and, therefore, a dissent is required. This case involved the Carrier's decision to assign a cabinet maker to perform B&B mechanic's work rather than assigning the Claimant who held a position as a B&B foreman. The Claimant's assignment of B&B foreman is on the same roster where the work was performed. Although the cabinet maker who was assigned to perform the mechanic's work held greater seniority as a mechanic than that of the Claimant, cabinet maker is on another roster than B&B foreman and mechanic.

The Carrier did not deny that it made no effort to determine the availability of the Claimant to perform overtime service on the instant claim date. Instead, it attempted to defend its actions by asserting that the cabinet maker assigned had the standing of No. 299 on the B&B mechanic's roster and the Claimant's was No. 352. The problem with the Majority's findings is that the cabinet maker's higher standing on the B&B mechanic's roster is immaterial because the Carrier was required to first exhaust the roster before calling cabinet makers, welders, plumbers, bridge operators, etc., in accordance with the practice accepted since Amtrak was first formed. The record reveals that the Carrier failed to provide any evidence of probative value of a practice to the contrary.

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The record reveals that the roster involved here contained Foremen, Assistant Foremen, B&B Inspectors and Mechanics. The employe assigned to the work involved in this instance, however, was assigned, by bulletin, to perform work as a cabinet maker, which is on a completely different roster than the Claimant and the mechanic. Inasmuch as such was the case the Majority erred in its findings in this Award and I, therefore, dissent

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roy C. Robinson". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Roy C. Robinson
Labor Member