

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35860
Docket No. MW-34924
01-3-98-3-651

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 the work of installing a camera system in the 30th Street Station at Philadelphia, Pennsylvania on April 17, 18, 19, 21 and 22, 1997 to employes other than the B&B mechanics who are headquartered in the 30th Street Station (System File NEC-BMWE-SD-3812 AMT).
- (2) As a consequence of the violations referred to in Part (1) above, Mr. O. O’Connell shall be allowed seven and one-half (7.5) hours’ pay at his time and one-half rate, Mr. V. McAllister shall be allowed twenty-two and one-half (22.5) hours’ pay at his time and one-half rate, Mr. M. Gibson shall be allowed fifteen (15) hours’ pay at his time and one-half rate, Mr. P. Lavelle shall be allowed twenty-six and one-half (26.5) hours’ pay at his time and one-half rate, Mr. A. DiCarne shall be allowed four (4) hours’ pay at his time and one-half rate, Mr. D. McCarthy shall be allowed eleven and one-half (11.5) hours’ pay at his time and one-half rate and Mr. C. Polinaire shall be allowed fifteen (15) 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 raises the issue of which Structures Department B&B Mechanics should have received overtime work installing ceiling hatches for a camera system at the 30th Street Station. The Claimants are headquartered at the 30th Street Station and primarily perform maintenance work within that facility. The Mechanics receiving the assignment are assigned to the Philadelphia Structures Department construction group, and were performing this installation on straight time as part of a C&S Construction Project.

This claim involves the application of Rule 55, Preference for Overtime, 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 their seniority.”

The Organization argues that overtime must be awarded based upon seniority, and notes that the Claimants held seniority within the 30th Street Station, while the Mechanics assigned did not. It contends that the Claimants were qualified and available to perform the work in issue, and that it is the type of work which they customarily perform within that location. The Organization takes issue with the Carrier's contention that the Claimants were part of the maintenance group and that this was construction type work, asserting that it failed to sustain its burden of establishing its affirmative defense that there were two separate types of Mechanics within the Structures Department. It seeks compensation at the overtime rate for lost work opportunities for the Claimants, citing Third Division Awards 30448 and 30586.

The Carrier contends that work involving the C&S Construction Project, of which installing the ceiling hatches for the camera system at 30th Street Station was a

part, was being performed on a daily basis by its Philadelphia Structures Department, which ordinarily and customarily performs construction work of this nature, and that it was in compliance with Rule 55 in assigning overtime to that group in accord with its Overtime Call-out Roster. The Carrier asserts that its Structures Department is divided into maintenance and construction forces, and that the Claimants were part of a gang performing basic maintenance functions at the 30th Street Station under the direction of the Property Manager, and had no demand right to this construction work, relying on Public Law Board No. 5512, Award 1. The Carrier also requests dismissal of this claim based upon the Organization seeking damages at the overtime rate, when it is well aware that the appropriate rate for a lost work opportunity on this property has been held to be the straight time rate, citing Public Law Board No. 4549, Award 1; Third Division Awards 27701, 28180, 28181 and 28349.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Rule 55 herein. The facts of this case are similar to those presented to the Board in Third Division Award 30685, where it was held that the phrase "ordinarily and customarily" within Rule 55 could refer to the "type" of work or be interpreted to refer to the "continuation" or "completion" of work. In this case the Board is of the opinion that "ordinarily and customarily" refers to the installation and construction work normally performed by the Philadelphia Structures Department, rather than the maintenance work routinely performed by the Claimants. Because the Organization did not dispute that the installation of the ceiling hatches for the camera system was part of the C&S Construction Project which the employees assigned the overtime in issue worked on a daily basis, it also could be said that this overtime assignment was a continuation or completion of such work. In either case, while the Claimants may have been available and qualified to perform the installation work, it was not the type of work which was ordinarily and customarily performed by them. Thus, the Carrier's assignment of such overtime to its construction forces did not violate the seniority provisions of Rule 55.

AWARD

Claim denied.

Form 1
Page 4

Award No. 35860
Docket No. MW-34924
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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 18th day of December, 2001.