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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35861
Docket No. MW-34939
01-3-98-3-678

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 Carrier violated the Agreement when it assigned Cabinet Maker K. Madeksiak and Inspector J. McAteer, instead of B&B Foremen M. Gallagher and G. Roach to remove platforms at the Wynnwood Station on May 28, 1997 (System File NEC-BMWE-SD-3813 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, B&B Mechanic Foremen M. Gallagher and G. Roach shall each be allowed six (6) hours' pay at their respective rates.”

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.

The issue raised by this claim is what seniority roster is to be used to fill B&B Mechanic overtime once all employees actively working in that classification have been exhausted. Both the Claimants and the two employees assigned the disputed overtime held B&B Mechanic seniority, but were working outside that classification. The Claimants were working in the B&B Foreman classification. The employees assigned, Madeksiak and McAteer, were working in the Cabinetmaker and Inspector classifications respectively, but were senior to the Claimants on the B&B Mechanic seniority roster.

This claim involves the proper 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 when the B&B Mechanics call-out list of active employees is exhausted, the Carrier should have called Mechanics based upon Foreman seniority order, noting that the Claimants perform the same character of work during their regularly assigned workweek, while Madeksiak performs a different type of work off the roster and McAteer does not normally work with gangs. The Organization asserts that because the Claimants were fully qualified, available and willing to perform the overtime assignment, the Carrier's failure to call them results in a violation of Rule 55. It avers that once the Carrier determined to use the Foreman roster, it was obliged to continue down that roster when filling the remaining Mechanic positions. The Organization takes issue with an asserted practice on the part of the Carrier to utilize the entire Mechanic roster (including employees not working in the classification) prior to turning to other seniority rosters in filling Mechanic overtime as being without contract support and not proven on this record. It requests compensation at the overtime rate for the Claimants, citing Third Division Awards 26508, 26690, 30448 and 30586.

The Carrier initially 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. The Carrier contends that it followed the concept of seniority contained in Rule

55 by using the Philadelphia Structures Department Craft Call-out List, which is based upon the B&B Mechanic Seniority roster, in seeking Mechanics to fill the overtime work available. It notes that the employees called were senior to the Claimants on that list, and none of them were actively employed as B&B Mechanics at the time. The Carrier asserts that there is no Agreement provision or understanding between the parties concerning a call procedure that specifies what classification you go to after exhausting active employees in the involved class, and argues that its six year practice of first exhausting the entire classification call-out list before using the B&B Foreman list is the most equitable way to distribute overtime in line with seniority within the classification.

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 procedure utilized by the Carrier to call employees for overtime work in the B&B Mechanic classification is to first exhaust those employees actively working in the Mechanics classification in order of seniority. There is no dispute as to the propriety of this action. Next, the Carrier calls employees working out of the classification but on the call-out list based upon their Mechanic seniority. The Organization asserts that the Carrier is obliged to utilize the list of employees actively working on the roster of the work performed, here the Foreman's roster, before considering Mechanics employed out of classification with different work responsibilities.

A reading of Rule 55 does not indicate that the phrase "work ordinarily and customarily performed" can only be interpreted to mean that, regardless of the classification of work involved, employees have a demand right to work performed based upon its similarity to their regular assignment. The language can also be read to reveal an intention to give preference for overtime work based upon an employee's seniority within the classification which "ordinarily and customarily performs" the work. Thus, the Carrier could reasonably determine that the work involved belonged to the Mechanics classification, which is undisputed, and that employees holding seniority in that class, whether actively working as Mechanics or not, have preference to the overtime assignment based upon their seniority within that classification. Absent a contrary Agreement to look to only active employees working within the roster prior to exhausting the seniority roster of the classification of work involved, which the Organization failed to establish, we are unable to find that the Carrier violated Rule 55 by the method it utilized to fill Mechanic overtime in this instance.

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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 18th day of December, 2001.