

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36044  
Docket No. MW-35789  
02-3-99-3-783

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 Lineman Trainee C. Arnold to perform overtime service in the vicinity of Smoketown, Pennsylvania on September 11, 1998 instead of Lineman R. Mauger (System File NEC-BMWE-SD-3905 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Mauger shall now be compensated for eight (8) hours' pay at his respective time and one-half 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 were given due notice of hearing thereon.

The issue raised by this claim is whether an Electric Traction Department (ETD) Lineman Trainee may be assigned unplanned overtime in preference to a Lineman with established seniority within the seniority district where the work took place, who had already accepted predetermined overtime. The Claimant is an ETD Lineman assigned to Gang J-122 headquartered at Wayne, Pennsylvania. ETD Lineman Trainee Arnold was assigned to Gang D-242 headquartered at Downingtown, Pennsylvania. Both had regular tours of duty on Monday-Friday, from 7:00 A.M. to 3:30 P.M.

During the morning of Friday, September 11, 1998 the Claimant was offered, and accepted, planned overtime assignments commencing at 5:00 A.M. on Saturday and Sunday, September 12 and 13, 1998 at Arsenal and the C&S project at Zoo. Later that day, after the Carrier had arranged the work force for these assignments, unexpected overtime arose for the night of September 11, 1998 beginning at 8:00 P.M. and ending at 4:00 A.M. The Organization did not dispute that Trainee Arnold was the last employee to be offered the overtime, as all senior Linemen had already been offered, and accepted other overtime assignments.

This claim involves the proper application of Rule 55, Preference for Overtime, and the October 1, 1980 Electric Traction (ET) Memorandum of Agreement (MOA) which provides, in pertinent part:

**“III. (a) A course of instruction will be established for ET Trainees . . .**

**\* \* \***

**(c) Trainees will perform any work done by a qualified Mechanic or such other work as is assigned in connection with his training, but:**

- (1) Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory, . . .**
- (2) Trainees will be assigned overtime work in accordance with their seniority in their respective working territories.”**

The Organization argues the assignment of an unqualified trainee in preference to the Claimant, who was a qualified Lineman with seniority in the work territory, violates both Rule 55 and the MOA, which has been found to restrict the use of trainees for overtime until senior qualified Mechanics with advertised positions within the work territory are called, citing Third Division Awards 30686 and 35642. It contends that the Claimant's acceptance of a Saturday overtime assignment does not make him ineligible or unavailable for a Friday overtime assignment, and that the Agreement requires the Carrier to offer all overtime assignments on a seniority basis. The Organization requests appropriate compensation at the overtime rate.

On the property, the focus of the Carrier's argument was that it had followed seniority order pursuant to Rule 55 and offered planned overtime to the Claimant and other Linemen on September 11, 1998, which was accepted for both Saturday and Sunday, September 12 and 13, 1998 beginning at 5:00 A.M. It contends that it is not required to rearrange its entire work force when a new, unexpected assignment subsequently arises, even if it comes first in time, and that the Agreement only requires that employees be offered overtime assignments by seniority. The Carrier argues that by nature of the Claimant's acceptance of the Saturday and Sunday overtime and its start time and location, the Claimant was unavailable to perform the Friday night assignment which arose after the scheduling of the Claimant's weekend overtime assignment, citing Third Division Award 32268.

The Carrier also contends that the claim is excessive, arguing that the appropriate rate for a lost overtime 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 35642, 28180. It notes that the Claimant worked 17 hours on Saturday and 18 hours on Sunday, and is now seeking additional overtime pay for eight hours on Friday night.

Before the Board, the Carrier expanded its argument to state that the Friday night overtime in issue was outside of the Claimant's work zone, as defined in the ETD Work Zone Agreement, and within Trainee Arnold's defined territory, and that the Organization failed to prove that the work in question was ordinarily and customarily performed by the Claimant giving him no demand right to it under Rule 55.

A careful review of the record properly before the Board convinces us that, under the particular circumstances of this case, the Organization failed to sustain its burden

of proving a violation of either Rule 55 or the ET Memorandum of Agreement. There is no doubt here that the Carrier recognized its Rule 55 obligation to offer overtime work opportunities to Linemen in order of seniority on September 11, 1998, and did so. The Claimant accepted overtime assignments for both Saturday and Sunday, September 12 and 13, 1998 during the morning of September 11, 1998. This commitment enabled the Carrier to put together the necessary work force to perform the scheduled overtime. When unanticipated overtime became available later in the day, the Carrier offered it to the next most senior employee, herein Trainee Arnold, who had not previously been offered and accepted overtime that day. The Organization failed to prove that the parties intended the Carrier's obligation under Rule 55 to be interpreted to require the Carrier to continually realign its planned overtime work force on each occasion when another unscheduled assignment subsequently arises during the same period. This is not a case where the overtime assignments were known simultaneously, and the Claimant had the seniority right to have been given his preference of which assignment he desired. See Third Division Award 32268.

The record reflects that the Claimant worked some 52 hours between Thursday, September 10 and Sunday, September 13, 1998, and cannot be said to have suffered any lost work opportunity by not also being offered an additional assignment on Friday night. It was reasonable for the Carrier to consider the Claimant unavailable for the disputed overtime assignment under the facts of this case.

**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 21st day of May, 2002.