

**Award No. 36045**  
**Docket No. MW-35790**  
**02-3-99-3-784**

**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 E/T Lineman K. Clark to perform overtime service (HRO duties) at Hellgate in New York City, New York on August 13, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-147/System File NEC-BMWE-SD-3901 AMT).**
- (2) The Agreement was violated when the Carrier assigned E/T Lineman R. Mack to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 19, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-141/System File NEC-BMWE-SD-3901).**
- (3) The Agreement was violated when the Carrier assigned E/T Lineman R. Mack to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 20, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-139/System File NEC-BMWE-SD-3901).**
- (4) The Agreement was violated when the Carrier assigned E/T Lineman K. Clark to perform overtime service (HRO duties) at the Secaucus Transfer Project on August 21, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-140/System File NEC-BMWE-SD-3901).**

- (5) The Agreement was violated when the Carrier assigned E/T Lineman K. Clark to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 22, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-143/System File NEC-BMWE-SD-3901).
- (6) The Agreement was violated when the Carrier assigned E/T Lineman R. Mack to perform overtime service (HRO duties) at the Aero Lift on August 25, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-142/System File NEC-BMWE-SD-3901).
- (7) The Agreement was violated when the Carrier assigned E/T Lineman K. Clark to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 27, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-144/System File NEC-BMWE-SD-3901).
- (8) The Agreement was violated when the Carrier assigned E/T Trainee S. Johnson to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 28, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-146/System File NEC-BMWE-SD-3901).
- (9) The Agreement was violated when the Carrier assigned Lineman R. Edgar to perform overtime service (HRO duties) at the Hunter Project in Newark, New Jersey on August 29, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-145/System File NEC-BMWE-SD-3901).
- (10) The Agreement was violated when the Carrier assigned Lineman R. Edgar to perform overtime service (HRO duties) at the Secaucus Transfer Project in Secaucus, New Jersey on August 29, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-148/System File NEC-BMWE-SD-3901).

- (11) The Agreement was violated when the Carrier assigned E/T Lineman K. Clark to perform overtime service (HRO duties) at the Hunter Street Yard on September 12, 1998 to the exclusion of regularly assigned Lineman/HRO F. E. Purcell, Jr. (Carrier No. 09-98-138/System File NEC-BMWE-SD-3901).**
- (12) As a consequence of the violation referred to in Part (1) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay and for seven (7) hours' pay at his respective double time rate of pay.**
- (13) As a consequence of the violation referred to in Part (2) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.**
- (14) As a consequence of the violation referred to in Part (3) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.**
- (15) As a consequence of the violation referred to in Part (4) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay and for eleven (11) hours' pay at his respective double time rate of pay.**
- (16) As a consequence of the violation referred to in Part (5) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.**
- (17) As a consequence of the violation referred to in Part (6) above, Claimant F. E. Purcell, Jr. shall now be compensated for five (5) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.**

- (18) As a consequence of the violation referred to in Part (7) above, Claimant F. E. Purcell, Jr. shall now be compensated for eight (8) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.
- (19) As a consequence of the violation referred to in Part (8) above, Claimant F. E. Purcell, Jr. shall now be compensated for six (6) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.
- (20) As a consequence of the violation referred to in Part (9) above, Claimant F. E. Purcell, Jr. shall now be compensated for nine (9) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.
- (21) As a consequence of the violation referred to in Part (10) above, Claimant F. E. Purcell, Jr. shall now be compensated for ten (10) hours and thirty (30) minutes' pay at his respective time and one-half rate of pay.
- (22) As a consequence of the violation referred to in Part (11) above, Claimant F. E. Purcell, Jr. shall now be compensated for ten (10) hours and thirty (30) minutes' 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 these claims is whether the Carrier was required, under Rule 55, to assign various incidents of overtime to the Claimant when he had expressed interest in attending HRO Driver Training class to learn multi-speed transmission truck driving on the road, but had yet to complete such training, as well as the nature of the Carrier's training obligation. The record contains evidence of other overtime claims submitted by the Claimant in July 1998 which were approved for payment by the Carrier.

The record reveals that the Claimant was able to operate the 13 or 16 speed standard shift transmission truck on the rail, but, at the time the overtime assignments in issue arose, had not yet been trained to drive it on the road. The Claimant was scheduled to receive such training on January 24, 1998, but was off work due to a personal injury at the time the class was given. Upon his return to work, the Claimant continued to request such training. According to his Supervisor, he offered the Claimant on-the-job training but the Claimant declined such offers. The Claimant states that although his Supervisor made such an offer, it never materialized, and he denies ever declining an opportunity for such training. The Carrier scheduled several training classes in 1998, but they were all canceled due to low enrollment. The Claimant, along with 15 other employees, did attend the next scheduled class given on January 19, 1999.

In the correspondence on the property, the Carrier claimed that the overtime assignments required the RO truck to be driven on the road from one location to another. The Organization asserted that one claim, #09-98-144, contained in paragraph seven herein, only involved the use of a Highway Platform Inspection Truck, an automatic transmission truck which the Claimant was qualified to drive. The Organization noted that Lineman R. Edgar had also requested similar HRO Training, but was assigned overtime in two instances (paragraphs 9 and 10 of the instant claim) despite not having received the training. The Carrier specifically responded that, while Edgar did request to be trained, Edgar was offered the work because he was capable of driving standard transmission trucks at this time. The Organization asserted that the Claimant was similarly capable, and noted that there is a difference between a manual transmission truck and a multiple speed transmission truck.

The Organization argues that, because the Claimant possessed seniority in the Lineman/HRO classification, and those individuals assigned the disputed overtime in

that classification did not, the Claimant was entitled to preference for such overtime assignments under Rule 55, citing Third Division Awards 26508, 26690, 29259 and 30660. It takes issue with the Carrier's defense that the Claimant was not qualified to operate the RO equipment by pointing to the Carrier's assignment of Edgar, who was similarly unqualified, to some of the work, as well as the fact that one such assignment involved a different piece of equipment. The Organization contends that the Claimant continually expressed his willingness to be trained in the operation of this road equipment, but the Carrier refused to provide him the opportunity to receive such training, despite its postings for training classes during this time period. It relies on Public Law Board No. 3460, Award 7 and Third Division Award 32439 to support its argument that the Carrier's failure to offer the Claimant the opportunity to obtain training was a violation of his seniority rights. It seeks compensation for 93 1/2 hours at the overtime rate and 18 hours at the double time rate for these missed overtime opportunities.

The Carrier contends that the Claimant admitted his inability to drive the RO truck over the road, the work involved in each instance of overtime, and, thus, the Carrier did not violate Rule 55 which gives preference for overtime work to qualified employees. It asserts that he was denied this work because he was not qualified to perform it. The Carrier also argues that the Claimant's inability to obtain training was not based on any fault of the Carrier, but on the fact that the Claimant was absent when he was originally scheduled for training, and there was insufficient interest throughout the remainder of 1998 to justify the Carrier holding another formal training class. It asserts that when it was able to solicit enough interest to justify the cost of a training session, it held one in January 1999, and the Claimant was included. The Carrier notes that the Organization pointed to no Rule requiring it to provide training at the employee's convenience, has not suggested that the Carrier engaged in a deliberate action to prevent the Claimant from obtaining qualifications, and failed to prove that other employees were trained during the period in question to the Claimant's detriment.

In its Submission to the Board, the Carrier asserts that assigning another unqualified employee to a position does not violate the Agreement or prove the Claimant's right to the job, citing Third Division Award 29700. It contends that the Organization failed to prove that claim #09-98-144 only involved an automatic transmission truck. The Carrier also notes that Lineman Clark performed the two disputed assignments as a continuation of his tour of duty and that the operation of the RO truck was incidental to his normal Lineman duties.

Initially we note that the Carrier's factual assertions presented for the first time to the Board have not been considered. A careful review of the record convinces the Board that the Organization failed to prove that the Carrier violated Rule 55 when it did not assign the Claimant overtime involving driving the RO truck on the road, as he was admittedly not qualified to perform such function. In order to have preference for overtime work under Rule 55, an employee must be both qualified and available to perform it. This is true regardless of whether the Carrier mistakenly, or inappropriately, assigned another unqualified employee to perform the work. The fact that Edgar may also have been unqualified does not mean that the Carrier violated the Claimant's Rule 55 preference when he was also unqualified.

We are unpersuaded that the Carrier failed in its obligation to provide training to the Claimant. The evidence shows that the Claimant was scheduled for training in January 1998 but, unfortunately, was off work due to a personal injury at the time the training class was held. The Organization did not dispute the Carrier's evidence that, although it attempted to solicit interest in another training session later in 1998, it had insufficient interest to make it cost effective to hold another training class until January 1999, when the Claimant was included and received the requested training. The Organization does not contend, and there is no evidence to prove, that the Claimant was somehow discriminated against or that training was arbitrarily withheld from him while being given to others during this time period, thus distinguishing Third Division Award 32439. Further, the Agreement does not require the Carrier to provide training on a set schedule or at a designated frequency.

This case contains certain factual disputes. First, whether the Claimant was offered, and declined, on-the-job training from his Supervisor. Second, whether each instance of overtime claimed involved driving the RO truck on the road. With respect to the offer of training, the Board is unpersuaded that either the Claimant's or the Supervisor's actions are determinative of whether the Claimant was qualified to perform the work in issue. We have found that the Organization failed to show that the Carrier did not meet its training obligation in this case.

However, repeatedly on the property, the Organization asserted that the work performed in claim #09-98-144 only involved automatic transmission truck work for which the Claimant was qualified. While in its initial denial of all claims the Carrier generally asserted that the work involved driving the RO truck on the road, thereby making the Claimant unqualified, it did not respond to the repeated contention that this

claim was different, and did not rebut the Organization's contention that the Claimant was qualified to operate the Highway Platform Inspection Truck, and had preference to such assignment over Lineman Clark in this instance. Under such circumstances, the Board concludes that the Organization met its burden of proving that the Carrier violated Rule 55 with respect to the claim in paragraph (7).

We deny the claims in paragraphs 1-6 and 8-11 for the reasons stated herein. We sustain the claim in paragraph seven, and direct that the Claimant be compensated for the eight hours and 30 minutes involved at his pro rata rate of pay which has been deemed to be the appropriate rate of compensation for work not performed on this property. See Public Law Board No. 4549, Award 1; Third Division Awards 35642 and 28180.

### **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 21st day of May, 2002.