

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36293
Docket No. MW-36391
02-3-00-3-633**

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)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Lineman Trainee H. Gardner to perform pre-determined overtime service on August 6, 1999 in the vicinity of the Mount Street Bridge and on August 10 and 11, 1999 in the vicinity of the Earls Road Bridge in Baltimore, Maryland instead of Lineman T. Stevens (System File NEC-BMWE-SD-3988 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Stevens shall now be compensated for twenty-eight (28) 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 time claim is whether the Carrier violated Rule 55 and the Electric Traction (ET) Training Agreement by assigning a Lineman Trainee to work scheduled overtime with his entire gang rather than calling the Claimant to work the overtime assignment. The Claimant is an ETD Lineman working on Gang D-032, who holds seniority within the work territory where the disputed overtime took place. Trainee Gardner was assigned to work with Gang D-322. Both the Claimant and Gardner had regular tours of duty on Monday - Friday, from 7:00 A.M. to 3:00 P.M. The overtime in issue was performed by Gang D-322 composed of a Gang Foreman, five ET Linemen and Trainee Gardner between 10:00 P.M. and 6:00 A.M. on August 6, 1999, and 11:00 P.M. and 7:00 A.M. on August 10 and 11, 1999.

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 Award 30686. The Organization points to the "in lieu of" language in the MOA as prohibiting the Carrier from using Trainees before qualified Mechanics, and contends that the Carrier is attempting to give Trainees seniority over qualified Mechanics based upon the assignment of an entire

gang to the overtime work. It notes that Trainees have no seniority within the Lineman classification, and requests appropriate compensation at the overtime rate.

The Carrier contends that Trainee Gardner worked overtime with the rest of his gang, that the overtime was part of the work assignment that Gang D-322 ordinarily and customarily performed during normal hours, and was thus properly assigned to it under Rule 55. The Carrier noted that Gardner was working with a Foreman and five fully qualified Linemen, and that he was assisting them in the application of grounding devices to the catenary system over all four tracks to ensure that contractor forces did not come into contact with live wires. The Carrier asserts that the Organization failed to prove that it had any need for additional Linemen on the assignment that Trainee Gardner was working "in lieu of" another qualified Lineman, or was performing work for which he was not qualified.

The Carrier avers that the MOA does not limit Trainee overtime to situations where all senior qualified employees are canvassed first within the territory. It argues that the intent of the MOA is to have Trainees assigned to a gang work with them on all occasions, as an apprentice program, and that certain work can only be performed outside regular working hours when the power is shut off at the project, and Trainees must be allowed to learn this aspect of the job as well.

Finally, the Carrier requests dismissal of this claim solely 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 and/or the MOA herein. Unlike the situation in Third Division Awards 30686 and 35683, the Carrier herein specifically rebutted the Organization's claim that Trainee Gardner was used "in lieu of" a qualified Lineman, and failed to show that additional Linemen were needed for the work represented by these overtime assignments. The MOA makes clear that a Trainee can perform any work done by a qualified Mechanic in connection with his training, and the Organization did not show that Gardner was used in other than his training capacity to assist the rest of the gang, as he normally did. Under such circumstances, the Board can find no violation of either Rule 55 or the MOA by the Carrier's

assignment of Trainee Gardner along with his entire gang to work on the job they ordinarily and customarily performed during normal work hours. The facts of this case clearly distinguish it from those presented to the Board in Third Division Award 36239.

Because the claim is denied on its merits, we need not address the Carrier's contention that the Organization's repeated request for the overtime rate of pay to remedy this type of violation requires dismissal.

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 October 2002.