

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37147
Docket No. MW-37148
04-3-02-3-119**

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 junior Track Foreman J. Mederios to take track out of service at Lawn Interlocking at Providence, Rhode Island on March 1 and 2, 2000, instead of Track Foreman W. Dew (System File NEC-BMWE-SD-4070 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Dew shall now be compensated for all time made by junior employee J. Mederios in the performance of the aforesaid work for a total of eight (8) hours' pay at his respective straight time rate of pay and nine (9) 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.

This claim raises the issue of whether the Carrier violated Rule 55 and the Overtime Call Order Agreement by assigning Track Foreman Mederios to the disputed overtime work rather than the Claimant, a Track Foreman with greater seniority. The Organization contended that the work assignment was taking track out of service so that electric welders could perform their work, which by practice had been assigned to the senior Track Foreman available. The Carrier noted that the function of taking track out of service did not belong exclusively to any craft, and that the overtime assignment involved assisting and supervising the welders as well as taking the track out of service. It explained that Mederios was selected because he was a rostered Foreman - Welder, and because the Claimant was not qualified to supervise welders and did not ordinarily and customarily perform such work he was considered unavailable for the assignment under Rule 55.

The Organization argues that the clear language of Rule 55 and the Overtime Call Order Agreement gives the Claimant preference for the overtime work involved, because he was the senior available and qualified employee who ordinarily and customarily performed the work of taking track out of service and the Carrier did not rebut the practice of using Track Foremen for this work. It points out that Mederios had only recently obtained his welder qualifications and was not in a position to supervise a welder who had been performing the job for over 12 years. The Organization avers that the Carrier realized its error and assigned the Claimant to similar work on the following day. The Organization asserts that the Claimant is entitled to receive both the straight time and overtime rates of pay for this assignment due to the Carrier's violation of Rule 55, citing Third Division Awards 26690, 30660, 32223, 32226, 32371, 35642, 36049 and 36495.

The Carrier contends that it complied with Rule 55 when it made the overtime assignment since Mederios held Foreman-Welder qualifications necessary to perform the work involved and the Claimant did not. The Carrier argues that the claim is excessive and should be dismissed solely on the basis of the Organization's request for penalty overtime since it continues to ignore the Board's

determination that the proper remedy for a lost overtime opportunity on this property is the pro-rata rate of pay, citing Public Law Board No. 4549, Award 1.

A careful review of the record convinces the Board that the Organization has not met its burden of proving that the Carrier violated Rule 55 or the Overtime Call Order Agreement in this case. There is no dispute that the Claimant is not a rostered Foreman-Welder, Mederios is, and that the Carrier reasonably determined that the work assignment involved not only taking track out of service but supervising and possibly assisting the welders in the performance of their job. Because the Claimant was not qualified to perform all of the functions of the overtime assignment, he had no preference to it under either Rule 55 or the Overtime Call Order Agreement, and the Carrier did not violate the Agreement by assigning a junior employee who met the qualifications.

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 25th day of August 2004.