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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37655
Docket No. MW-37551
05-3-02-3-656

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 called and assigned junior employee R. Dickens to perform overtime service (air brake switch renewal work) on September 15 and 16, 2001, instead of Mr. M. Reilly (System File NEC-BMWE-SD-4140 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Reilly shall now be compensated for twenty-six (26) 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 protests the assignment of a junior Maintenance Gang Substation Electrician to perform weekend overtime work on a construction project rather than the Claimant, a member of Construction Gang D-251. It involves the application of Rule 55, Preference for Overtime Work, 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 seniority.”

The Organization contends that the Claimant, as a Substation Construction Electrician, ordinarily and customarily installs air brake switches and was available and qualified on the claim dates, and that the Carrier's assignment of planned weekend overtime doing such construction work to Dickens, a member of a maintenance gang, violates Rule 55. It notes that economy is not a valid reason to violate seniority, citing Third Division Awards 21609 and 14591; First Division Award 24883. Further, the Organization asserts that Dickens was not even assigned to Maintenance Gang J-103 by bulletin when he was afforded the overtime. The Organization seeks overtime premium pay to compensate for this violation, citing Third Division Awards 26508, 26690, 30448, 30586 and 32371 in support of the appropriateness of this remedy on the property. It relies on Third Division Awards 35642, 35863, 36045, 36049, 36233, 36239, 37068, 37094, and 37146 in support of its contention that Rule 55 has been violated in this case.

The Carrier argues that the Claimant and his Construction Gang were not entitled to be called for this overtime assignment because they were assigned to perform electrical work on the 30th Street Garage Construction Project when the materials for the air brake switch renewal project arrived. It asserts that because the work had to be completed within the fiscal year in which it was budgeted (ending September 30, 2001) the project was assigned to Maintenance Gang J-103, which performed layout and preparation work for it during their regular tour of duty and the actual installation process on overtime during the weekends when power could be interrupted to facilitate the work. The Carrier contends that the

disputed September 15 and 16 overtime work was a continuation of the regular assignment of Dickens and his maintenance gang, and that Rule 55 gave them preference to the overtime involved in that assignment. The Carrier notes that there is no Rule prohibiting it from keeping Dickens with his Maintenance Gang pending his award to another assignment after passing his electrician certification test. It also contends that the Claimant made himself unavailable for Saturday overtime work because he turned down an offer to perform overtime on Saturday, September 15, 2001. Finally, the Carrier argues that the issue of the appropriate measure of compensation for a missed overtime assignment on this property has been held to be the pro rata rate for work not performed. See Third Division Awards 30686, 31129 and 35863.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of the Claimant's seniority preference for overtime under Rule 55(a). The Carrier admittedly split its workforce into construction and maintenance gangs and makes work assignments accordingly. However, this claim does not protest the original assignment of the air brake switch renewal project to Maintenance Gang J-013, despite it being construction work by nature, or take issue with the fact that such gang performed this work as their normal assignment during the week prior to the disputed overtime. That being the case, the Board agrees with the Carrier's position that because Construction Gang D-251 where the Claimant was working was not "ordinarily and customarily" performing the work on the air brake switch renewal project, and Maintenance Gang J-013 was, the disputed overtime assignment was a continuation of the work performed during their normal hours and, under the terms of Rule 55, they had preference to the overtime work rather than the Claimant. The cases relied upon by the Organization are distinguishable on this basis alone. Because the Organization did not establish a contractual violation in the Carrier's retention of Dickens with the maintenance gang where he was working on the air brake switch renewal project prior to passing his certification test pending his receipt of another assignment, it failed to show that the assignment of the disputed weekend overtime to him was a violation of the Claimant's seniority rights to overtime under Article 55(a). Accordingly, the Board need not address the issue of the appropriate remedy for a missed overtime opportunity on this property.

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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 7th day of December 2005.