

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37820
Docket No. MW-38465
06-3-04-3-424**

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 failed to call and assign B&B Mechanic Foreman T. Krall to perform B&B foreman overtime service duties on the Wilmington Work Zone on April 5, 2003 and instead called, assigned and upgraded B&B Mechanic D. Provence (Carrier's File NEC-BMWE-SD-4325 AMT).**
- (2) The Agreement was violated when the Carrier failed to call and assign B&B Mechanic Foreman T. Krall to perform B&B foreman overtime service duties on the Wilmington Work zone on April 6, 2003, and instead called and assigned junior Foreman O. Steward (Carrier's File NEC-BMWE-SD-4329 AMT).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant T. Krall shall now be compensated for thirteen (13) hours at the overtime rate of pay for this lost work opportunity.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant T. Krall shall now be compensated for ten (10)**

hours at the overtime rate of pay for this lost work opportunity."

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 two different overtime assignments made on B&B Foreman work converting a bridge from a timber to concrete ballasted deck on the Wilmington Subdivision (Zone 2). When there were insufficient forces to perform the work within that subdivision, the Carrier utilized employees on the B&B Foreman seniority roster from the Philadelphia B&B Department (Zone 4) who were headquartered at Penn Coach Yard (PCY). The Claimant is assigned to B&B Maintenance Gang I-023 in Zone 4 under the direction of U.S. Equities at the 30th Street Station, and is senior to the two individuals selected for this overtime.

This claim involves the application of Rule 55, Preference for Overtime, 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 their seniority."

The Organization argues that once the Carrier offered the overtime work outside of Zone 2, it was obliged to do so to the Claimant on the basis of his superior

Foreman seniority under Rule 55, relying on Third Division Awards 13833, 15810, 26508, 26690, 28656, 29259, 31129 and 35239. It asserts that the Agreement does not distinguish the particular duties of a B&B Foreman to either bridge or building work and must be applied as written, citing Third Division Awards 20276 and 20956. The Organization relies upon Third Division Awards 26508, 26690, 30448, 30586 and 32371 as support for its request for compensation at the overtime rate.

The Carrier contends that, while the Claimant may have been senior, qualified and available to perform the disputed overtime, he was not entitled to these assignments under Rule 55 because it was not on work ordinarily and customarily performed by him. It notes that the Claimant customarily performs building maintenance work within the limits of the 30th Street Station and does not perform maintenance or repair to bridges, which is ordinarily and customarily done by its Wilmington Subdivision and PCY B&B Department forces. The Carrier relies upon Third Division Awards 28782, 32154, 35860 and 36295 in arguing that the Claimant had no preference right to these overtime assignments, and Third Division Awards 31129, 35863 and Public Law Board No. 4549, Award 1 in establishing that the straight time rate is the appropriate measure of damages for a lost overtime opportunity on this property.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a Rule 55 violation herein. Much like the situation in Third Division Awards 35860 and 36295, this case turns on whether the phrase "work ordinarily and customarily performed" within Rule 55 refers to the type of work involved in the assignment, rather than merely the classification of employees performing it. See also Third Division Awards 30685 and 32154. The Organization was unable to show that the Claimant, who was normally assigned to building maintenance work within the 30th Street Station, ordinarily and customarily performed the bridge repair work at issue in this overtime assignment. Nor did it rebut the Carrier's assertion that such work is customarily performed by its Wilmington Subdivision and PCY B&B Department forces, where both junior employees worked. Because the Claimant did not ordinarily and customarily perform the disputed work under the Board's interpretation of Rule 55, he was not entitled to a preference for these overtime assignments based upon his superior seniority.

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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 21st day of June 2006.