

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38124  
Docket No. MW-38615  
07-3-04-3-643

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employes Division –**  
( **IBT Rail Conference**  
( **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 employe R. Brown to perform overtime B&B foreman service on August 22, 23, 24, September 6 and 7, 2003 instead of B&B Foreman T. Krall (System File NEC-BMWE-SD-4386 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Krall shall now be compensated for forty-eight (48) 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 Claimant is a B&B Mechanic Foreman regularly assigned to Gang I-013 under the direction of U. S. Equities at 30th Street Station (Zone 4) in Philadelphia, with a tour of duty from 7:00 A.M. to 3:00 P.M., Saturday and Sunday rest days. R. Brown is a B&B Mechanic Foreman assigned to Gang I-277 headquartered at Penn Coach Yard (Zone 4) in Philadelphia, with a tour of duty from 6:00 A.M. to 2:30 P.M., Saturday and Sunday rest days. Brown is junior to the Claimant.

On the dates in question, the Carrier needed a Foreman to perform overtime work involving maintenance and repairs to bridges in the Wilmington work zone (Zone 2) which work is typically performed by Foremen in that zone. The Foremen in that zone declined the overtime opportunity. The Carrier then offered the overtime to junior employee Brown over the Claimant. This claim followed.

Rule 55(a) provides that "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 record shows that although the Claimant was senior to Brown, Brown's assignment was to a gang which performed maintenance and repairs to bridges, whereas Claimant's assignment was to a gang which performed building maintenance within the limits of the 30th Street Station. Under the circumstances, because the overtime work involved maintenance and repairs to bridges which junior employee Brown customarily performed and the Claimant did not, the Organization has not met its burden to prove under Rule 55 that the Claimant was entitled to ". . . preference for overtime work . . . on work ordinarily and customarily performed by [the Claimant]." See Third Division Award 37820 between the parties:

"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. . . . 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."

Based on the above, the Organization has not met its burden requiring that the claim be denied.

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 23rd day of April 2007.