

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38125
Docket No. MW-38736
07-3-05-3-147

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 employee O. Steward to perform B&B mechanic foreman service on September 27 and October 18, 2003, instead of B&B Foreman T. Kralle (System File NEC-BMWE-SD-4398 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Kralle 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 dispute raises similar issues to those discussed in Third Division Award 38124 where the Carrier had overtime work involving bridge repairs in a different zone worked by the Claimant and, after the Foremen in that zone declined the overtime, the Carrier offered the overtime to a junior Foreman in the Claimant's zone rather than offering the work to the Claimant. With reliance upon Third Division Award 37820 between the parties, the Board found in Third Division Award 38124 that because the junior Foreman'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 ... 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].'"

Here, there were insufficient forces on the Wilmington Subdivision (Zone 2) to perform work for preparing a bridge for replacement, building concrete forms on another bridge and other bridge work resulting from a bridge strike and overtime was offered to Foremen in the Philadelphia B&B Department (Zone 4) to do the work. Junior Foreman Steward is a Foreman on Gang I-363 which is a structural maintenance gang headquartered at Penn Coach Yard in Philadelphia in Zone 4 and his gang customarily performed work on bridges, whereas the Claimant's gang (also in Zone 4) performed building maintenance. Under Rule 55, because the overtime involved bridge repair, which was not "... work ordinarily and customarily performed by [the Claimant]," but was work customarily performed by junior Foreman Steward, the Claimant was not entitled to preference to the overtime.

As in Third Division Award 38124, this claim shall therefore be denied. In light of that finding, the procedural issue raised on the property by the Carrier is moot.

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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 23rd day of April 2007.