

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38126  
Docket No. MW-38812  
07-3-05-3-224

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 Agreement was violated when the Carrier failed to call and assign B&B Foreman T. Kralle and Mechanic M. Lee to perform overtime service in assisting local forces on a bridge project in the Wilmington Work Zone on January 10, 2004 and instead called and assigned junior Foreman R. Brown and Mechanic V. Granato (System File NEC-BMWE-SD-4432 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Kralle and M. Lee shall now each be compensated for fourteen (14) hours at their respective time and one-half rates 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 Claimant Kralle and, after the Foremen in that zone declined the overtime, the Carrier offered the overtime to a junior Foreman in Claimant Kralle's zone rather than offering the work to Claimant Kralle. 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, Foreman R. Brown was junior to Claimant Kralle and Mechanic V. Granato was junior to Claimant Lee. On the date in dispute, Brown and Granato who were assigned to Gang I-277 (Zone 4) were used on overtime to assist local forces on a bridge project on the Wilmington Subdivision (Zone 2) because there were insufficient B&B forces in Zone 2 to perform the work. The Claimants were assigned to Gang I-013 (Zone 4) and were not offered the work.

As in Third Division Award 38124, the record reveals that junior employees Brown and Granato worked on a gang which ordinarily performs maintenance and repairs to bridges, whereas the Claimants were assigned to a gang which performs 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 employees Brown and Granato, the Claimants were not entitled to preference to the overtime.

As in Third Division Award 38124, this claim shall therefore 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.