

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38127
Docket No. MW-39157
07-3-05-3-665

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 Employees 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 assigned and allowed Supervisor D. Hammond to perform Maintenance of Way work (track foreman overtime service with members of Gang G-133) on September 3, 2004 instead of Track Foreman A. Alessi (System File NEC-BMWE-SD-4477 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Alessi shall now be compensated for ten (10) 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 holds seniority as a Foreman in the Track Department and is regularly assigned to Gang G-133 at Penn Coach Yard in Philadelphia. On Friday, September 3, 2004 (one of the Claimant's rest days) the Carrier called Equipment Operators J. Lesnifsky and J. Picciotti (members of the Claimant's gang who were also on a rest day) to operate a backhoe and a front-end loader performing grading work on a parking garage project. Lesnifsky and Picciotti worked ten hours that day.

Although Lesnifsky and Picciotti were called for overtime on September 3, 2004, the Claimant was not. The Organization contends in this case that Lesnifsky and Picciotti received job briefings, instructions and directions from Supervisor D. Hammond and also worked under Hammond's supervision for the ten hours they worked on September 3, 2004 and, therefore, Hammond improperly performed the Claimant's Foreman's duties on that date. In short, according to the Organization, in addition to Lesnifsky and Picciotti, the Claimant should also have been called for overtime on September 3, 2004.

For the following reasons, the claim shall be denied.

First, according to the initial claim presented on the property dated October 28, 2004, the Organization alleged that "The Carrier violated Rule 55 of the current Agreement when it assigned and allowed Supervisor D. Hammond to perform the duties of a Track Foreman on an overtime assignment." 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." There is nothing in that Rule (or any other Rule cited to us) which requires that when overtime is assigned to some members of a gang that a Foreman must also be called for that same overtime. The decision to call overtime and the number of employees necessary to perform the overtime work is the Carrier's managerial prerogative. Therefore, just because the Carrier called Equipment Operators Lesnifsky and Picciotti for overtime on September 3, 2004 did not, as a

matter of contract, require that a Foreman (i.e., the Claimant) also had to be called for overtime.

Second, the Organization argues that Supervisor Hammond gave Lesnifsky and Picciotti job briefings. There is nothing in Rule 55 or any other Rule which requires that job briefings must only be performed by a Foreman. On the contrary, the evidence shows that the employee in charge of the work typically conducts the job briefing. Therefore, Supervisor Hammond could conduct a job briefing.

Third, the Organization's argument that Supervisor Hammond obtained track foul time to allow Lesnifsky and Picciotti to perform their work does not prove that Hammond improperly performed Foreman's duties. Putting aside the Carrier's assertion that such permission was not necessary because the work was performed in the yard and was not under the jurisdiction of a Dispatcher, there is nothing in the record which shows that only a Foreman can obtain that type of protection for Equipment Operators to perform their work.

Fourth, employee submitted evidence shows that Hammond issued instructions. But again, as a Supervisor, that is the kind of work that Hammond would ordinarily perform.

Fifth, although there is some question as to how much contact was had with Lesnifsky and Picciotti, the evidence reveals that there was another Foreman on duty when Lesnifsky and Picciotti worked the overtime. Foreman J. McKeever worked his regular assigned tour of duty that day. There is no Rule or factual support for the Organization's position that the calling of Lesnifsky and Picciotti to work overtime also required the calling of another Foreman to work overtime when a Foreman was already on duty.

Based on the above, the claim lacks factual and Rule support and must be denied.

Form 1
Page 4

Award No. 38127
Docket No. MW-39157
07-3-05-3-665

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.