

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38129
Docket No. MW-39366
07-3-06-3-224

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 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’s overtime service with members of Gang G-133) of material clean up in the QX and PCY areas on January 14, 2005, instead of Track Foreman A. Alessi (System File NEC-BMWE-SD-4509 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Alessi shall now be compensated for twelve (12) 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 is the same dispute presented to the Board in Third Division Award 38127. In this case, the Organization contends that the calling of Equipment Operators D. Leash and J. Picciotti on their rest day to work 12 hours of overtime on January 14, 2005 loading containers on trucks also necessitated the calling of the Claimant, who was observing a rest day, to work that overtime as a Foreman because Supervisor D. Hammond performed Foreman duties on that date.

Based on the facts presented in Third Division Award 38127, the Board found that neither Rule 55 nor any other Rule dictated that the calling of Equipment Operators to work overtime also required the calling of a Foreman to work the same overtime; job briefings can be performed by the employee in charge, which may not be a Foreman; nothing requires that only a Foreman can obtain protection for Equipment Operators to perform their work; the issuance of instructions can be performed by a Supervisor; and there was a Foreman on duty. Given the facts presented in this case, those findings are also justified for this dispute.

As in Third Division Award 38127, based on the facts presented in this case, this claim also lacks factual and Rule support and must be denied.

AWARD

Claim denied.

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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.