

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38210
Docket No. MW-38883
07-3-05-3-319

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
**(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 assign Repairman M. Doering to scheduled overtime in assisting other forces on the Harrisburg Division of June 19, 2004 and instead assigned Repairman Foreman D. Chadwick (System File NEC-BMWE-SD-4446 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Doering shall now be compensated for twelve (12) hours 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.

At the time this dispute arose, the Claimant held a MW Repairman position on Gang H-104, headquartered at the Roadway Equipment Shop in Wilmington, Delaware. On June 19, 2004, MW Repairman Foreman D. Chadwick was called out and assigned scheduled overtime on the Harrisburg Division as support for other Maintenance of Way forces. The Carrier did not offer the overtime opportunity to the Claimant because the Claimant did not hold a commercial drivers license ("CDL") due to lack of the required medical card.

Rule 55(a) provides:

"RULE 55 PREFERENCE FOR OVERTIME WORK"

- (a) 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 Claimant did not possess a CDL required to drive the vehicle designated by the Carrier to be used in the performance of the overtime work. The Claimant was therefore not "qualified" under Rule 55(a). Nothing requires the Carrier to rearrange its deployment of vehicles in order to provide the Claimant with a vehicle he can drive so as to accommodate the Claimant's desire to work overtime.

Based on the above, the Organization failed to satisfy its burden of proof. The claim will therefore 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 25th day of June 2007.