

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39952
Docket No. MW-40257
09-3-NRAB-00003-080061**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 call and assign Tie and Timber Gang S-125 employees A. Bendigo, R. Dussault and M. Carter to perform overtime service (replace ties) at Mile Post 206 on Track 1 at Mansfield, Massachusetts, on June 11, 2006 and instead called and assigned Maintenance Gang employees A. Brockmiller, J. Hayden and S. McCormick (Carrier's File NEC-BMWE-SD-4621 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants A. Bendigo, R. Dussault and M. Carter shall now each be compensated for nine (9) hours of overtime at their respective and applicable 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.

On Sunday, July 11, 2006, the Carrier required the replacement of three ties at Mile Post 206 on Track 1 at Mansfield, Massachusetts. The Carrier called three employees who were members of a maintenance gang to perform the work on overtime. The Organization contends that the Carrier was obligated to call the Claimants instead. The Claimants were members of Gang S-125, a tie/timber production gang. The Organization maintains that the very purpose of Gang S-125's existence was replacement of ties across the New England Division.

Agreement Rule 55(a) provides:

“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.”

It is well established that the term “ordinarily and customarily performed,” as used in Rule 55, refers not to the type of work, but rather to the continuation and completion of work. See, e.g., Third Division Awards 35860 and 32154. During handling on the property, the Carrier asserted that the work ordinarily and customarily performed by Gang S-125 was replacement of ties on a large scale basis as part of a major track renovation, whereas the work at issue was routine maintenance following discovery of the need to replace the ties in a track inspection, work ordinarily and customarily performed by a track maintenance gang such as the one called in on July 11, 2006. The Organization failed to prove otherwise, but merely continued to rely on the type of work performed, i.e., the replacement of ties. Accordingly, the claim must be denied.

Form 1
Page 3

Award No. 39952
Docket No. MW-40257
09-3-NRAB-00003-080061

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 30th day of September 2009.