

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41095
Docket No. MW-40930
11-3-NRAB-00003-090222**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned overtime service on August 10, 19, 24, 26 and September 16, 2007 to M/W Repairman E. Barth instead of M/W Repairman S. Martinez (Carrier’s File NEC-BMWE-SD-4722 AMT).**
- (2) The Agreement was violated when the Carrier assigned overtime service on August 11, 12, 18 and 25, 2007 to M/W Repairman E. Barth and on September 16, 2007 to ET Repairman K. Lockett instead of M/W Repairman D. Skuya (Carrier’s File NEC-BMWE-SD-4720).**
- (3) The Agreement was violated when the Carrier assigned overtime service on August 17, 2007 to M/W Repairman E. Barth instead of M/W Repairman T. Peto (Carrier’s File NEC-BMWE-SD-4724).**
- (4) The Agreement was violated when the Carrier assigned overtime service on September 21, 28, October 19 and November 10, 2007 to M/W Repairman E. Barth instead of M/W Repairman T. Peto (Carrier’s File NEC-BMWE-SD-4721).**
- (5) The Agreement was violated when the Carrier assigned overtime service on September 23 and October 20, 2007 to M/W Repairman E. Barth and on September 27 and October 1, 2007 to ET**

Repairman K. Lockett instead of M/W Repairman S. Martinez
(Carrier's File NEC-BMWE-SD-4723).

- (6) As a consequence of the violation referred to in Part (1) above, Claimant S. Martinez shall now be compensated for a total of forty (40) hours at his respective time and one-half rate of pay.
- (7) As a consequence of the violation referred to in Part (2) above, Claimant D. Skuya shall now be compensated for a total of sixty-six (66) hours at his respective time and one-half rate of pay.
- (8) As a consequence of the violation referred to in Part (3) above, Claimant T. Peto shall now be compensated for a total of twelve (12) hours at his respective time and one-half rate of pay.
- (9) As a consequence of the violation referred to in Part (4) above, Claimant T. Peto shall now be compensated for a total of thirty-five (35) hours at his respective time and one-half rate of pay.
- (10) As a consequence of the violation referred to in Part (5) above, Claimant S. Martinez shall now be compensated for a total of forty (40) 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.

These claims, dated October 1 and November 19, 2007, originated on the property separately, but were consolidated in this proceeding because they are identical with respect to Rule 55, Preference for Overtime Work.

The Organization alleges a violation of Rule 55 when the Carrier, instead of using the Claimants, called upon other M/W Repairmen to support projects for concrete tie rehabilitation, joint elimination and tie replacement on the New York Division. The Claimants, assigned to the shop at the Adams M/W Base, rely on Rule 55 in their claims of overtime preference to provide coverage for track equipment used to assist a Track Department gang.

The progression of this claim on property shows that it was processed in the usual and customary manner including placement before the highest officer of the Carrier designated to handle it.

Rule 55 states “[e]mployees 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.”

Third Division Award 32154 concluded that “Rule 55 allows, indeed requires, [the Carrier] to make distinction between individuals within a class where such distinctions are appropriate.” Applying Award 32154 to the findings that follow, the Board concludes that the Carrier appropriately made distinctions within Rule 55.

Specifically, the Claimants ordinarily and customarily perform work at Adams M/W Base on major overhauls and restoration of equipment in the shop. As with the Claimants, the two M/W Repairmen are headquartered at the Adams M/W Base, but they are assigned to gangs with their duties in the field where they perform maintenance and minor repairs as well as troubleshoot. This distinction of duties within the class (Repairmen) is appropriate within Rule 55 as noted in Award 32154.

Besides Award 32154, the Organization recognizes this class distinction as it arises in these claims - “there was a very clear distinction between what type of M/W Repairmen work was ‘ordinarily and customarily’ performed by the Claimants versus” the two Repairmen who got this assignment.

Consistent with Rule 55 and distinctions within class, the Carrier assigned this contested overtime work to two field M/W Repairmen thereby placing responsibility

with them for maintenance of all equipment used by Track Department employees and necessary repairs during the course of the projects.

Although the Claimants occasionally perform work in the field, such work is ordinarily and customarily performed by field Repairmen. Therefore, the Claimants' occasional performance does not bestow a preference for overtime in these claims.

Aside from the distinctions in Repairmen work, the Board finds that M/W Repairman Barth on certain dates in Case Nos. SD-4720 and 4722 and M/W Repairman Lockett on September 27, 2007 in Case SD-4723 performed overtime work which was continuous with their regularly assigned tours of duty. Continuous work into overtime is not a violation of Rule 55. (See Third Division Award 36048.)

In short, there is no compelling reason or evidence from the Organization to disrupt the persuasive conclusions in Awards 32154 and 36048.

Given these circumstances, the Board finds no violation of the Agreement and denies the claims.

AWARD

Claims 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 18th day of October 2011.