

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41148
Docket No. MW-40966
11-3-NRAB-00003-090290**

The Third Division consisted of the regular members and in addition Referee Patrick Halter 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 Southern District Gang Z-010 employee A. Urquhart to perform welding work on the Northern District between Mile Posts 49.3 to 50.5 on December 17, 18, 19 and 20, 2007 (Carrier’s File NEC-BMWE-SD-4734).
- (2) As a consequence of the violation referred to in Part (1) above, Northern District Welder Claimant T. McGill shall now be compensated at his respective and applicable rates of pay for all straight time and overtime hours expended by Southern District employee A. Urquhart in the performance of the aforesaid work on the Northern District on December 17, 18, 19 and 20, 2007.”

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 claim, dated January 29, 2008, alleges that the Carrier violated Rule 10 (Seniority) Rule 14 (Seniority Districts) and Rule 55 (Preference for Overtime Work) when it assigned Southern District employees to perform thermite welding on the Northern District between Mile Posts 49.3 and 50.5 instead of assigning the work to a Thermite Welder Foreman such as the Claimant.

The progression of the claim on property reveals it was processed in the usual and customary manner, including placement before the highest officer of the Carrier designated to handle it. Following a conference discussion on September 3, 2008, the claim is now properly before the Board for adjudication.

There is no dispute that the overtime work involved here was performed on the Northern District by an employee from the Southern District. In other words, the work was performed by an employee without any seniority on the Northern District. The Carrier's position – the Claimant was working straight time and overtime on December 17 and was unavailable on other days – does not insulate it from applying Rules 10, 14 and 55. Specifically, Rule 14(f) provides that when the Carrier requires Track Department thermite welding work within the geographical boundaries of a seniority district, the work will be assigned to employees holding positions within that seniority district. Exceptions to Rule 14 are not present in this instance.

The Board follows Third Division Awards 5413, 4667, 24480 and 24576 holding that work accruing to employees within a seniority district must be reserved for employees holding seniority on that district and cannot be assigned to an employee from another district. The Carrier did not assign the disputed overtime work to an employee with seniority on the Northern District.

The claim, moreover, is not overcome because the Claimant was employed on one or more of the days during the relevant time period. The Carrier's decision to use an out-of-district employee represents a loss of work opportunity within the Claimant's seniority district and, in this circumstance, a monetary remedy is appropriate consistent with the rationale set forth in Third Division Award 19840.

**Form 1
Page 3**

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of November 2011.