

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41794
Docket No. MW-42117
13-3-NRAB-00003-130062**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Pan Am Railways/Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to offer or assign overtime service on August 1, 2, 3, 4 and 5, 2011 to Work Equipment Maintainer D. Conner and instead assigned junior employee D. McCaw (Carrier’s File MW-11-22).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Conner shall now be compensated for a total of twelve (12) hours at his respective overtime 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 a preference for overtime claim arising under the following provisions of Article 10- Overtime:

“10.4 Overtime will be assigned in the following manner:

- (a) Overtime immediately following the regular assigned work period will be given to the incumbent(s) of the position or crew.

* * *

- (c) Planned overtime, rest day, and holiday work will be given in seniority order to available qualified employees in the territory of the work involved who ordinarily and customarily perform such work

- (d) Planned overtime, rest day, and holiday work which is a continuation of a work project of a specialized nature, such as tie and surface, rail laying, construction, clean-up, etc., will be given to the specialized crew ordinarily doing this type of work during the regular assigned work week, with the members of the specialized crew being utilized in the order of their seniority, if available”

The facts of the instant dispute establish that both the Claimant and McCaw were regularly assigned as Work Equipment Repairmen headquartered in Waterville, Maine, and that the Claimant had superior seniority to McCaw in that classification. The Work Equipment Sub-Department only has one classification - Work Equipment Repairman (WER). During the week of August 1—5, 2011, McCaw was assigned by his Assistant Manager to go to Portland and stand-by to perform equipment repair work needed by a surfacing gang during his regular

work hours. The overtime in dispute was worked during that week in this assignment.

The Organization argues that the Claimant's seniority rights were violated when the Carrier made no attempt to call or assign him to this planned overtime stand-by equipment breakdown/repair work to be performed for a surfacing gang crew at railroad crossings in Portland, Maine. It asserts that because the Carrier did not advertise WER positions to work with surfacing gangs, and only advertised headquartered positions, this work could not be McCaw's regular assignment, and the overtime cannot be considered a continuation of his regular assignment under Article 10.4(a). The Organization contends that if a WER is assigned to start work away from headquarters, the overtime resulting is planned overtime and is properly assigned under Article 10.4(c) in order of seniority. It maintains that the requested remedy is appropriate, because the Claimant lost this overtime work opportunity, and, if there is a dispute concerning the hours claimed, the parties can be directed to make a joint record check.

Conversely, the Carrier contends that whatever overtime was worked during the claim period by McCaw was unplanned overtime assigned in accordance with Article 10.4(a), because it was immediately following his regular assignment, and/or 10.4(d) because it was a continuation of the work project to which he was assigned on straight time during that workweek. It asserts that it is the Carrier's prerogative to select any employee to perform work within his job classification, and that the parties' Agreement does not require it to select the senior employee for this straight time work assignment away from headquarters, noting that there is no special classification within the Work Equipment Sub-Department for roadwork. The Carrier notes that the inclusion of a location other than headquarters in some past advertised positions was for administrative convenience and cannot govern future requirements. It argues that the Carrier has the flexibility to make work assignments using Work Equipment Repairmen to best meet the needs of its service - a right not restricted by seniority in the parties' Agreement. The Carrier contends that the Organization failed to establish any damages suffered by the Claimant, who was assigned to work within his classification during the claim period.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Article 10.4. The overtime in

dispute, if any, arose in conjunction with the Carrier's proper assignment of McCaw to provide stand-by service for a surfacing gang outside headquarters during the claim period. Thus, such was his regular assignment that week, and the disputed overtime was a continuation of such assignment and work project, and properly assigned to McCaw pursuant to Article 10.4(a) and/or (d). The facts do not support the Organization's position that this was planned overtime to be assigned by seniority under Article 10.4(c). While there is no doubt about the importance of seniority, the Organization can point to no provision within the parties' Agreement that requires the Carrier to make straight time job assignments within the WER classification on the basis of seniority, or to advertise WER positions as "road" vs. "headquarter" positions, because the needs of the Carrier's service obviously fluctuate with time. There is no doubt that Article 10.4(c) gives preference to planned overtime assignments on the basis of seniority. However, the Board is not convinced that the fact that an assignment is away from headquarters is enough to convert any overtime that may be required on such assignment to "planned" overtime. Accordingly, the claim for overtime compensation must be denied.

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 17th day of December 2013.