

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41795
Docket No. MW-42118
13-3-NRAB-00003-130063**

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 July 7, 8, 11, 12, 13, 14 and 15, 2011 to Work Equipment Maintainer D. Conner and instead assigned junior employee D. McCaw (Carrier’s File MW-11-19).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Conner shall now be compensated for a total of twenty-one and one-half (21.5) 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:

(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). According to the claim, during the period encompassed by the claim dates, McCaw was assigned by his Assistant Manager to come in early and stay late on overtime to stand-by to perform equipment repair work on a tamper/liner doing rail crossings in Portland, Maine. These facts were not disputed by the Carrier, and they differentiate this case, from the one decided by the Board in Third Division Award 41794.

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 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 report early and stay late on overtime

performing work away from headquarters, the resulting overtime is “planned overtime” and 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.

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(d), because it was a continuation of the work project to which he was assigned on straight time during that work period. 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 a 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 the Carrier’s service, a right not restricted by seniority in the parties’ Agreement.

A careful review of the record convinces the Board that the Organization met its burden of proving a violation of Article 10.4 in this case. Unlike the situation existing in Award 41794 - where the overtime worked by McCaw resulted from the continuation of a proper straight time assignment - the existence of overtime in this case was known to the Assistant Manager at the time of the assignment, as evidenced by the fact that the job instructions were to report early on overtime, and stay late on overtime, as needed. In this case, the facts support the Organization’s position that this was “planned overtime,” which should have been assigned by seniority in accordance with Article 10.4(c). While 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, there is no doubt that Article 10.4(c) gives preference to “planned overtime” assignments on the basis of seniority. Although this overtime assignment also encompassed a straight time work assignment, the fact that the Assistant Manager was assigning overtime before (and possibly after) regular hours makes the provisions of Article 10.4(c) applicable. The Carrier’s failure to offer the assignment to the Claimant, who had superior seniority to McCaw and was qualified and available, violated the parties’ Agreement. Because the Carrier did not provide any challenge to the asserted

number of hours of overtime worked by McCaw during the claim period, the claim will be sustained.

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 17th day of December 2013.