

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41797
Docket No. MW-42120
13-3-NRAB-00003-130070**

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 19, 20, 21 and 22, 2011 to Work Equipment Maintainer D. Conner and instead assigned junior employe D. McCaw (Carrier’s File MW-11-21).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Conner shall now be compensated for a total of fifteen (15) 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 July 19—22, 2011, McCaw was assigned by his Assistant Manager to stand by to perform equipment repair work on a tamper/liner doing rail crossings in Portland, Maine, during his regular work hours. The overtime in dispute was worked during that week in this assignment.

The facts of this case, as well as the arguments raised by both parties, are identical to those raised in Third Division Award 41794, where the primary issue

was whether the overtime in dispute was “planned” or not. Therein the Board held that the Organization failed to meet its burden of proving a violation of Article 10.4 because the overtime arose in conjunction with the Carrier’s proper straight time assignment of McCaw to provide standby service to perform equipment repair in conjunction with a surfacing gang, and was properly considered a continuation of such assignment and work project pursuant to Article 10.4(a) and/or (d).

After a careful review of the record in this case, the Board is convinced that the same result applies here for the same reasons. The facts do not support the Organization’s position that this was “planned” overtime to be assigned by seniority under Article 10.4(c). As the Board noted in that case, 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.