

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26385

Docket Number MW-26164

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation (Amtrak) -  
(Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it used Mr. J. Miller instead of Mr. A. Bradshaw to perform overtime service in connection with flagging work at Mile Post 86 beginning January 10, 1983 (System File NEC-BMWE-SD-663).

2. Because of the aforesaid violation, the claimant shall be allowed pay at his appropriate overtime rate for an equal number of hours worked by Mr. J. Miller in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The issue in this case is whether the Carrier violated the Agreement when it removed the senior Claimant and utilized a junior employee in flagging. In the facts of the instant case, the Claimant had been working a job requiring overtime flagging protection and was the senior employee. Claimant, in his initial Claim, noted that as of January 10, 1983, a junior employee was given the flagging job, thus denying him his overtime. The Carrier does not dispute the fact that the Claimant was not provided the opportunity to continue on a job which would have resulted in overtime pay.

The Organization advanced it's Claim on grounds that the Carrier violated Rule 55 which states:

"Rule 55. Preference for Overtime Work

(a) Employees residing at or near their headquarters 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."

It requested compensation of overtime lost in that the removal of the Claimant was in violation of Claimant's seniority rights. In addition to Rule 55, the Organization also raised the issue of additional Rule violations which were not, in the mind of this Board, either germane or shown by probative evidence to have been violated by the Carrier.

The Carrier denied any Agreement violation pointing out that flagging is not a position, but a duty or job performed by numerous different positions. It noted that Rule 55 had historically been applied to allow Carrier to proceed as herein disputed. Carrier was permitted to assign overtime work to employees who were doing such work in their normal tour of duty. When Claimant had been regularly assigned the job as a daily assignment, he had been kept on such job when overtime was required. Similarly when another employee was assigned the job (junior to the Claimant), that employee continued on any overtime needed to complete his regular assignment. The Carrier argued that "there is no provision in the current Agreement which requires that the Carrier assign employees to a work assignment on the basis of whether that assignment will require that the employees work overtime."

In our review of this case, we find no probative evidence in the record on property to show a Carrier violation of the Agreement. There is nothing in the Agreement which cites in clear and unambiguous language the position of flagging. The Organization did not refute Carrier's arguments, either about historical establishment of Rule 55, or its application.

The burden of proof lies with the Organization. It has failed to sustain its burden. This ruling is consistent with past Awards which hold that the Carrier has the managerial right to assign various employees to accomplish needed tasks at its direction unless restricted by Agreement (Third Division Award 25128). Finding no such restriction herein, the Claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

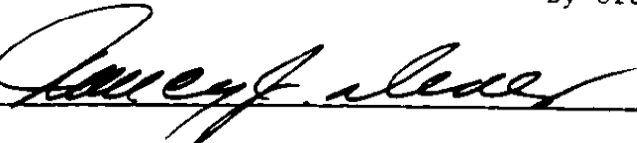
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.