

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30449
Docket No. MW-29137
94-3-89-3-557

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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 Agreement was violated when the carrier assigned junior employees R. DeMatos and P. Lloyd instead of Mr. J. Jacobsen to perform overtime service on July 23 and 24, 1988 (System File NEC-BMWE-SD-2313).
- (2) As a consequence of the aforesaid violation, Mr. J. Jacobsen shall be allowed nineteen (19) hours of pay at the applicable trackman's rate."

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 waived right of appearance at hearing thereon.

At the relevant time, Claimant, R. DeMatos and P. Loyd held Trackmen's positions on Gang M-422 with hours of 10:30 P.M. to 7:00 A.M. and weekends off. Of the three, Claimant was the most senior.

Overtime was needed for Saturday, July 23, and Sunday, July 24, 1988. According to a statement provided by Claimant's supervisor H. Conyers, on Friday, July 22, 1988, Conyers called Claimant's home twice and each time received no answer. Two hours later, Conyers again called Claimant, also without success. Conyers then proceeded down the seniority list and obtained employees junior to Claimant (DeMatos and Loyd) to perform the overtime work. Late in the afternoon of July 22, Conyers did speak with Claimant. Conyers states that he told Claimant that he had a slot open for Saturday evening and asked if Claimant wanted the job. Conyers explained to Claimant that all other jobs were already set up and Conyers would not be able to contact the employees given those jobs to cancel those assignments and substitute Claimant. As a result, Claimant worked less overtime on the dates set forth in the claim than did the junior employees.

Rule 55(a) states:

"Employees 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."

The probative evidence in the record shows that Claimant was given preference for the work on the basis of his seniority. Conyers repeatedly called Claimant over a substantial period of time to offer him the overtime work but received no answer. Conyers then proceeded down the seniority list. Given the repeated unsuccessful attempts by the Carrier to contact Claimant for the overtime work, nothing in the Rule or in this record required the Carrier to restructure the overtime assignments after they were made because Claimant later made contact with the Carrier and requested the overtime assignment. Under the circumstances, the Carrier's actions were reasonable. See Third Division Award 27627 between the parties.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.