Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30603
Docket No. MW-30257
94-3-91-3-725

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation
((Amtrak)

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

(1.) The Carrier violated the Agreement when it assigned junior Substation Electrician. W. Marsh to perform protection of contractors excavating at Substation 42 on August 27, 28, 29, 30, and 31, 1990. (System File NEC-BMWE-SD-2784 AMT).

(2.) As a consequence of the violation referred to in Part (1) above, Substation Electrician S. Nychay shall be allowed pay for fifteen (15) hours' overtime at his time and one-half 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 time of the incident giving rise to this case, Claimant was assigned as a Relay Electrician at Durant Yard, New York. During the period of August 27 through 31, 1990, Carrier assigned another employee, junior to Claimant, to work a total of 15 hours' overtime service. By letter of September 5, 1990, Claimant filed a claim for the hours worked. The claim was denied and subsequently progressed up to and including the highest carrier officer empowered to handle such matters.

"RULE 55

PREFERENCE FOR OVERTIME WORK

(a) Employes 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."

"SUPPLEMENTAL AGREEMENT (May 12, 1976)

* * *

II. Predetermined overtime work in the Electric Traction Department of the Southern District:

a) Predetermined overtime work shall be confined to senior available qualified employees on the tour on which the overtime work occurs, except that overtime work starting two hours and forty minutes, or less, in advance of the regular starting time of a tour, shall accrue to employes on that tour."

This case is not a matter of first impression. In particular, Third Division Award 27090, involving the same parties, held:

"[Rule 55], however, does not support the view that seniority status must be followed simply because work during regular hours may or may not lead to completion during overtime. This is in contrast, of course, to situations where employees are specifically called for a discrete overtime or rest day assignment. Further, Rule 55 does not operate to impair the practice of permitting employees to complete a regular assignment when overtime is therewith required...."

Moreover, the Organization has not provided probative evidence to support its contention that the May 19, 1976 Supplemental Agreement supersedes Rule 55 in the instant case.

In light of the foregoing, the Board must deny the claim in its entirety.

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 2nd day of December 1994.

LABOR MEMBER'S CONCURRENCE AND DISSENT
TO
AWARD 30603, DOCKET MW-30257
(Referee Wesman)

The Majority erred when it found that this was not a case of first impression and erroneously applied Third Division Award 27090 as precedent in this case. This is true because the dispute decided in Third Division Award 27090 did not involve work in the Electric Traction Department of the Southern District and the Supplemental Agreement which was applicable in the instant dispute was not an issue in that case. Hence, the Board was correct to decide that dispute based on an interpretation of Rule 55. However, the instant dispute, in fact, was a case of first impression and the Majority simply blew it.

On May 12, 1976, the parties entered into a Supplemental Agreement, to become effective May 19, 1976, which contained certain specific rules applicable only to the Electric Traction Department of the Southern District. That Supplemental Agreement specifically stipulates that it is to "... remain in effect until modified or changed in accordance with the provision (sic) of the Railway Labor Act, as amended." It should be noted that the Carrier never once so much as asserted that said Agreement had ever been modified or changed, nullified or superseded in any way. The portion of the Supplemental Agreement applicable to this dispute is quoted within the award and not repeated here.

It is a hornbook principle of contract interpretation that specific rules must prevail over general rules. When the parties adopted the Supplemental Agreement, said Agreement specifically addressed the assignment of overtime in the Electric Traction Department of the Southern District in clear and unambiguous terms. The Supplemental Agreement is quite clear that predetermined overtime work shall be confined to the senior available qualified employes on the tour on which the overtime work occurs. It was never disputed that the work involved in this dispute was predetermined overtime work in the Electric Traction Department of the Southern District. Faced with such a clear rule which addressed the situation here, the Majority should simply have sustained the claim and been done with it.

The Majority's attempt to place some nebulous burden on the Organization to provide "... probative evidence to support its contention that the May 19, 1976 Supplemental Agreement supersedes Rule 55 in the instant case." is clearly improper and erroneous. It was the Carrier who was asserting that the clear language of the Supplemental Agreement did not apply. Hence, the burden should properly have been on the Carrier to offer some sort of "... probative evidence to support its contention...." Of course, such evidence was completely absent from the record in this case simply because no such evidence exists.

Inasmuch as the Supplemental Agreement clearly should have been applied in resolving this dispute and inasmuch as Third Division Award 27090 had no precedential value for the reasons cited above, this award is palpably erroneous and of no precedential value.

Respectfully submitted,

G. L. Hart
Labor Member