

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30685
Docket No. MW-30094
95-3-91-3-511

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Third Rail Foreman P. Jones instead of Foreman R. Peterson who was senior, available and qualified to perform such service, for overtime work on Track 16 at Penn Central Station, New York, New York on May 14, 15 and 16, 1990 (System File NEC-BMWE-SD-2730 AMT).
- (2) Mr. R. Peterson shall be allowed thirty (30) hours at his time and one-half rate of pay for the hours worked by Mr. Jones on May 14, 15 and 16, 1990."

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 outset, the Carrier argues that the claim must be dismissed because the Organization did not initially request a remedy of pay at the punitive rate, but did so in its submission to the Board. The Carrier contends that it is "procedurally improper" to make such change in the claim. The Board does not find that this specification as to requested remedy is sufficient to require that the claim not be disposed of on its merits.

In May 1990, the Claimant was assigned as Foreman with Third Rail Gang P182 with tour of duty from 8:00 A.M. to 4:00 P.M. Another junior employee was assigned as Foreman with Gang P183 with the same duty hours. The Carrier states without contradiction that Gang P182 "ordinarily and customarily" performs maintenance work, while Gang P183 was "a construction gang and was assigned during its regular work week" to a specific construction project -- installation and construction at Penn Station.

On May 14-16, 1990 overtime was required from 10:00 P.M. to 8:00 A.M. for the continuing installation and construction work. The junior Foreman was selected for the overtime. The Organization argues that the Claimant, as the senior, available, qualified employee should have been selected instead for this overtime assignment.

The parties make extensive reference to past practice in such matters as well as to the background of the type of work involved here. The Board finds it sufficient, however, to resolve the matter on the meaning of the following:

Rule 55, Preference for Overtime Work, states in pertinent part:

"(a) 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 Supplemental Agreement of May 19, 1976 states in pertinent part:

"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 employees on that tour.

* * *

(c) For predetermined overtime work requiring more employees than normally employed on that tour, the senior available qualified employee from the remaining tours will be used to augment that force."

A reading of the Supplemental Agreement provisions clearly indicates that it concerns in Section II(a) overtime assignment by seniority where the overtime is "on the tour;" and in Section II (b) the use of additional employees from another tour to "augment" the employees on the tour on which the overtime is worked.

Neither of these situations is applicable here. The overtime was not "on the tour," as it might have been, for example, on rest day work. Employees were not needed to "augment" a force on another tour.

Rule 55 also gives strong support to overtime assignment by seniority. It includes the limitation, however, that the work is "ordinarily and customarily performed" by those eligible to be assigned the overtime.

This phrase was reviewed in Third Division Award 29720, involving the same parties. That Award stated:

"The phrase, 'work ordinarily and customarily performed' is not precise. It can refer to the type of work, which would clearly encompass the Claimants herein. Alternately, it can be interpreted to refer to the continuation or completion of such work."

Here the "type" of work is that of Foreman, which of course the Claimant and the junior employee share. However, the Board is persuaded that in this instance the phrase "ordinarily and customarily performed" refers to installation and construction work (as contrasted with maintenance work) and more particularly to the project in which the junior employee (and his Gang) was performing within the same workweek in which the overtime occurred.

The Organization argues that, in general, overtime assigned by seniority within a seniority district is the widely accepted and Rule-endorsed method. Equally convincing, as argued by the Carrier, is the additional restriction where the criterion of "ordinarily and customarily" must, as here, be applied.

In sum, as in Third Division Award 29720, the Board does not find the Carrier's action in Rule violation.

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AWARD

Claim denied.

O R D E R

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 31st day of January 1995.