

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30686
Docket No. MW-30095
95-3-91-3-514

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 Employes
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(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 assigned Third Rail Trainee Anderson instead of Third Rail Electrician J. DeFillippis to perform overtime service at Penn Central Station, New York, New York, on Tuesday, April 3, 1990 (System File NEC-BMWE-SD-2721 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. DeFillippis shall be allowed ten (10) hours of pay at the third rail electrician's 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.

Except in one determinative aspect, this dispute is virtually identical to that reviewed in Third Division Award 30685 and the Findings therein are incorporated here by reference.

The exception is that the ten hours' overtime in dispute was assigned to a Trainee in Gang P183. The Claimant, an Electrician

assigned to Third Rail Gang P182, contends that he should have been assigned the overtime.

In support of its position, the Organization refers to the October 1, 1980 Memorandum of Agreement governing training of Electric Traction forces. Section II (c) reads as follows:

"(c) Trainees will perform any work done by a qualified Mechanic or such other work as is assigned in connection with his training, but:

(1) Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory, established in accordance with the Agreement dated April 27, 1977.

(2) Trainees will be assigned overtime work in accordance with their seniority in their respective working territories."

The Organization contends that this means that the Claimant, a qualified, available mechanic should have been assigned the overtime in preference to the Trainee.

Following receipt of the Organization's Submission to the Board, the Carrier advised the Board of what it considered "new arguments" therein. It did not, however, cite the Organization's reference to the Trainee Agreement as a "new argument" which should not be considered. In addition, the Carrier did not argue any contrary meaning as to the Trainee Agreement. Specifically, it did not rebut the Organization's position that the Trainee was working "in lieu of a qualified mechanic."

On this basis, and in contrast to the result in Third Division Award 30685, the claim must be sustained based on the limited right to overtime for Trainees.

The claim seeks pay at the punitive rate. It is well established in a myriad of Awards that the proper remedy on this property has been and is straight-time pay for lost overtime opportunity. Unless otherwise changed by mutual agreement of the parties, it is difficult to comprehend why this issue continues to arise.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.

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