

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31003
Docket No. MW-30247
95-3-91-3-707

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 Third Rail Electrician J. Datz, instead of Third Rail Maintainer F. Benyak, to perform maintainer service on the 12:00 Midnight to 8:00 A.M. shift at Penn Station, New York on May 17, 1990 (System File NEC-BMWE-SD-2761 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Third Rail Maintainer F. Benyak shall receive four (4) hours' pay 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.

This is one of a number of claims as to the alleged entitlement to overtime assignments by Third Rail Maintainers in instances where a Third Rail Maintainer reports off from the scheduled trick. In this instance, the record shows that a Maintainer reported off less than two hours prior to his scheduled 12 Midnight to 8:00 AM trick. Rather than utilize Third Rail Maintainers, the Carrier assigned the work (and the appropriate pay rate) to a Third Rail Electrician who was already scheduled on duty on a straight-time basis for the trick on which the vacancy occurred.

The Organization's principal contention is that the Claimant, a Third Rail Maintainer regularly assigned to the 8:00 AM to 4:00 PM shift, should have been assigned to the position on an overtime basis from 4:00 AM to 8:00 AM. This, the Organization argues, is what is required under the terms of the May 18, 1978 Memorandum of Agreement in reference to operational requirements in the Electric Traction Department. This Agreement provides the following:

- "3) Line Maintainers and Third Rail Maintainers will be established on a basis of a three trick operation, twenty-four (24) hours per day, seven (7) days a week, including holidays. . . .
- b) Except in the case of a scheduled vacation, Maintainer on his relief day or days will be subject to call to fill a vacancy, when at least two (2) hours notice is given prior to the starting time of the vacancy
- c) When a notice of less than two (2) hours is given to the appropriate officer or his designated representative, the Maintainer on the previous assigned trick will be first subject to the assigned position for four (4) hours; with the Maintainer on the succeeding (sic) trick subject to the second four (4) hours, and then the Maintainer on his relief day or days."

The Organization recognizes that the Carrier retains the right to determine if the vacancy is to be filled or not. If the vacancy is to be filled, however, the Organization contends that the Carrier is required to do so under Section 3 (c), quoted above; that is, by calling the Maintainers on the tricks before and after the vacancy for four hours each.

The Carrier contends that Section 3 is applicable in instances where it is determined to fill the position by overtime, under which Maintainers are "subject to" such call. The Carrier, however, argues that this order of precedence and obligation does not require the assignment of overtime, nor does it prohibit the use of an available, qualified employee on straight time. In support of this, the Carrier points to Paragraph A(1)(e) of the Scope and Work Classifications Rules, which reads in pertinent part as follows:

"The listing of work under a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of existing rules or agreement between the parties hereto."

The Organization maintains that Section 3 of the May 18, 1978 Agreement, among other Rules, constitutes "existing rules or agreement" which nullifies the last sentence of Paragraph A(1)(e) in this instance.

The Board concludes that Section 3 may not be interpreted as broadly as the Organization urges. The use of the phrase "subject to" therein indicates an obligation on the referenced employees and not an automatic entitlement to overtime service where no overtime is actually worked by any employee. (Where overtime is assigned, other Rules obviously provide for precedence to be given to Maintainers for overtime Maintainers' work.) Put another way, there is no support in Section 3 for the concept advanced by the Organization that employees may not be temporarily upgraded in the course of their regular work schedule.

In this and related claims, the Carrier raised a number of procedural issues. With the Board's conclusion as stated above, there is no purpose in reviewing these issues.

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 26th day of July 1995.