

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32154
Docket No. MW-31396
97-3-93-3-298**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Repairman R. Smith to perform overtime service repairing Philadelphia Subdivision equipment instead of assigning senior Repairman W. Hayes to perform said work on November 4 and 6, 1991 (System File NEC-BMWE-SD-3064 AMT).**
- (2) The Agreement was violated when the Carrier assigned junior Repairman R. Smith to perform overtime service, performing repairs to equipment used by the C&S Department to set signals at Shore and Ford on November 9, 10, 11, 15 and 16, 1991 instead of assigning senior Repairman A. Cunha to perform said work (System Docket NEC-BMWE-SD 3061).**
- (3) The Agreement was violated when the Carrier assigned junior Repairman R. Smith to perform overtime service (providing mechanical coverage for MW equipment which C&S was setting signals) at 'I' and 'B' Streets, on December 6, 1991, instead of assigning senior Repairman E. Cannon to perform said work (System File NEC-BMWE-SD-3095).**
- (4) The Agreement was violated when the Carrier assigned junior Repairman R. Smith to perform overtime service (providing coverage for equipment) on the third shift on December 19, 23, 26,**

29 and 30, 1991 instead of assigning the senior Repairman W. Hayes to perform said work (System File NEC-BMWE-SD-3104).

- (5) The Agreement was violated when the Carrier assigned junior Repairman R. Smith to perform overtime service (providing mechanical coverage for Philadelphia track equipment) on May 29, 1992 instead of assigning senior Repairman W. Hayes to perform said work (System File NEC-BMWE-SD-3162).
- (6) As a consequence of the violation referred to in Part (1) above, Repairman W. Hayes shall be allowed thirteen (13) hours' pay at the repairman's time and one-half rate.
- (7) As a consequence of the violation referred to in Part (2) above, Repairman A. Cunha shall be allowed fifty-one (51) hours' pay at the repairman's time and one-half rate.
- (8) As a consequence of the violation referred to in Part (3) above, Repairman E. Cannon shall be allowed eight (8) hours' pay at the repairman's time and one-half rate.
- (9) As a consequence of the violation referred to in Part (4) above, Repairman W. Hayes shall be allowed twenty-eight (28) hours' pay at the repairman's time and one-half rate.
- (10) As a consequence of the violation referred to in Part (5) above, Repairman W. Hayes shall be allowed thirteen (13) hours' pay at the repairman'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 were given due notice of hearing thereon.

This dispute originated on the property as five separate claims, but they have been combined here because four of them are virtually identical, involving overtime on rest days, and one is similar although possibly distinguishable, involving overtime beyond the normal work hours.

The common thread is that overtime was assigned on various occasions to a Repairman junior to the Claimants, which the Organization argues is in violation of Rule 55(a), which reads as follows:

“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 dispute does not concern the Claimants' qualification, availability, or status senior to the employee assigned the work. The issue is limited to the designation of one Repairman, by posted bulletin, to “work in the field”, as contrasted with the general Repairman work performed in shops. The Organization objected to reference to this in the Carrier's Submission by stating that the “carrier made no such assertion and argument during the handling of this dispute on the property.”

The Board finds, however, that the “field” position was discussed on the property. As one example, the appeal reply of the Director, Labor Relations in Case NEC-BMWE-SD-3162, stated in pertinent part as follows:

“The claimant normally and customarily performs heavy overhaul and major repairs of large M/W equipment. On the other hand, [the employee assigned the overtime], while not expected to make major repairs, is expected to solve problems with field equipment as simple as a rail saw. . . . The scope of the repairs he is expected to make is broader than that regularly encountered by a shop repairman. . . .

Contrary to the union's attribution, the use of terms 'field repairman' and 'shop repairman' should not [be] equated with the creation of new work classifications. Both positions are Repairman M.W. Equipment positions. These terms are simply a convenient way of distinguishing specific duties within the broad range defined by the general Work Classification rule. Rule 55 clearly recognizes that different individuals within a class will ordinarily and customarily perform different work. Otherwise the authors of the rule could simply have provide[d] preference overtime work for 'work of the classification'. Rule 55 allows, indeed requires, [the Carrier] to make distinction between individuals within a class where such distinctions are appropriate."

Awards have frequently interpreted "work ordinarily and customarily performed." Applicable here, by parallel interpretation, is Third Division Award 30685, involving the same parties. Award 30685 stated:

"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). . . ."

The five combined claims here, in their Statements of Claim, do not directly challenge the concentration of a Repairman on "field work" as contrasted to shop work. It follows that the assignment of "field work" overtime to the designated employee conforms with the "ordinarily and customarily performed" requirement.

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 13th day of August 1997.