

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35862
Docket No. MW-35624
01-3-99-3-548**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 B&B Mechanic H. Chin to perform overtime service (opening office doors for cleaners) at 32nd Street Headquarters in Philadelphia, Pennsylvania on February 21, 1998, instead of assigning Claimant O. Stewart to perform said work (System File NEC-BMWE-SD-3872 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, B&B Cabinetmaker O. Stewart shall be allowed nine and one-half (9.5) 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 were given due notice of hearing thereon.

The issue raised by this claim is who should have been called on Saturday, February 21, 1998 to perform the overtime work of opening office doors for the four to six cleaners engaged in quarterly cleaning involving power equipment at the 32nd Street Headquarters. The Organization's on-property correspondence asserts that the Claimant held the position of B&B Cabinetmaker, while the Carrier stated that he was a Foreman. It appears undisputed that the employee assigned, H. Chin, held the position of B&B Mechanic/Material at the time of the dispute.

This claim involves the proper application of Rule 55, Preference for Overtime, which provides, 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 Organization argues in its Submission to the Board that both the Claimant and Chin were Mechanics, that the Claimant was senior to Chin on the Mechanic seniority roster, that both employees were on their rest days, and that the Claimant was qualified and available to perform the work of opening doors for cleaners. In the sparse on-property correspondence, the Organization states that the Claimant was a Cabinetmaker, that Chin was a Mechanic who was often assigned outside the 32nd Street Material room by a Supervisor other than the Material Administrator, and that no reason was given why the Claimant could not have performed this work. It seeks overtime pay for the nine and one-half hours worked by Chin on the claim date.

The Carrier initially requests dismissal of this claim based upon the Organization seeking damages at the overtime rate, when it is well aware that the appropriate rate for a lost work opportunity on this property has been held to be the straight time rate, citing Public Law Board No. 4549, Award 1; Third Division Awards 27701, 28180, 28181 and 28349.

On the property, the Carrier contended that the Claimant had no demand right to this work because he was a Foreman who did not ordinarily and customarily perform work of this nature. It asserts that since the establishment of a blanket purchase order in July 1996, the Material Administrator has scheduled weekly and quarterly cleaning for the 32nd Street headquarters, quarterly cleaning is scheduled on a weekend due to safety reasons arising from the nature of the work performed, and the Material Administrator offers overtime to the B&B and C&S Material employees reporting to her who are headquartered at that location, because they have access to all areas to be cleaned and normally and

customarily provide access to the cleaners during normal weekly cleaning and supply products as needed. The Carrier averred that Chin occasionally worked outside the area in a capacity other than Mechanic on overtime assignments, and was regularly assigned to the Material area where the work in issue occurred.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Rule 55 herein. While presenting certain facts as undisputed to the Board, the record on the property fails to establish either that the Claimant was senior to Chin on the Mechanic roster or that he was working in such capacity at the time of the overtime assignment. The Claimant is described by the Organization as a Cabinetmaker, and by the Carrier as a Foreman; neither classification of work was involved in the disputed assignment. Further, the Organization was unable to refute the Carrier's assertion that the nature of the overtime assignment was work customarily performed by Materials area employees, of which Chin was one, or that the overtime assignment by the Materials Administrator was not in compliance with her established practice. In a case of this sort, the Organization must establish that the overtime assignment violated the pertinent provision of the Agreement; it is not the Carrier's burden to show that the Claimant could not have performed the work in question. See Third Division Awards 24409, 17833, 16288. Accordingly, the claim must fail for lack of proof.

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 18th day of December, 2001.