

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36049
Docket No. MW-36024
02-3-00-3-129**

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 improperly assigned Mr. S. Kowalski to perform routine third rail electrician overtime service on November 21, 22, 26, 28, 29, December 5 and 6, 1998 instead of calling and assigning said service to regularly assigned Third Rail Electricians J. DeFillippis and/or P. Parisio (System Files NEC-BMWE-SD-3921, NEC-BMWE-SD-3922, NEC-BMWE-SD-3923, NEC-BMWE-SD-3924, NEC-BMWE-SD-3925).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. DeFilippis shall now be compensated for fifty-three (53) hours’ pay at his respective time and one-half rate of pay and Claimant P. Parisio shall now be compensated for twenty-eight (28) hours’ pay at his respective time and one-half rate of pay.”**

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 these time claims is whether the Carrier violated Rule 55 by assigning a senior third Railman working a special duty assignment in the drafting room to overtime performing third Railman work on the claim dates in preference to other gang members currently performing third rail functions.

The record establishes that Kowalski maintains seniority rights as a third Railman, but accepted and worked in a special duty assignment in the drafting room since May 1998, and has not performed third rail duties since that time. On various dates in November and December 1998, the Carrier assigned Kowalski to perform overtime work in the third rail department without offering such work to the Claimants, third Railmen currently working in that position.

The Organization argues that the Carrier violated Rule 55(a) by not assigning the overtime in dispute to the Claimants who ordinarily and customarily perform the work. It notes that the Carrier previously recognized its long-standing policy that special duty employees are placed at the bottom of the seniority roster for regular gang-related work, but maintain their regular seniority rights for purpose of bidding and bumping, citing specific examples of previous claims settled on this basis. The Organization seeks payment of overtime for the lost work opportunity associated with these work assignments.

The Carrier initially contended that Kowalski never accepted the special duty assignment, and performed work within his regular classification during this period. It argues that it complied with Rule 55 by assigning him overtime because he was senior to the Claimants in the class, qualified and available. The Carrier also asserts that the claims are excessive as they seek payment for work not performed at the penalty rate, citing Public Law Board No. 4549, Award 1.

A careful review of the record convinces the Board that the Organization has met its burden of proving that the Carrier violated Rule 55(a) by its disputed overtime assignments in this case. Kowalski was admittedly on a special duty assignment in the drafting room since May 1998 and did not "ordinarily and customarily" perform third

rail work since that time, as did the Claimants. Rule 55(a) gives preference for overtime to qualified, available employees "on work ordinarily and customarily performed by them," in seniority order. Because Kowalski did not meet the requirements of this overtime preference Rule despite his superior seniority, he did not have a demand right for the disputed work. The Carrier's failure to assign the work to the Claimants, who had preference under Rule 55(a) violates the Agreement. As noted in Public Law Board No. 4549, Award 1 and Third Division Award 35642, the prevailing practice on this property is to pay straight time for missed overtime work. Accordingly, the claim is sustained at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 21st day of May, 2002.