

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36239
Docket No. MW-36390
02-3-00-3-632

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))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Lineman Trainee T. Goode to perform scheduled overtime service in the vicinity of the Frederick Avenue Bridge in Baltimore, Maryland on August 12, 1999 instead of Lineman T. Stevens (System File NEC-BMWE-SD-3984 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Stevens shall now be compensated for eight (8) hours' pay at his respective straight time 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 this time claim is whether the Carrier violated Rule 55 and the Electric Traction (ET) Training Agreement by assigning a Lineman Trainee at straight

time to perform protection work in conjunction with another Lineman called on overtime, rather than calling the Claimant, a fully qualified Lineman, on overtime.

The record establishes that on April 12, 1999 the Carrier canvassed for two qualified Class "A" employees to work predetermined overtime providing protection services on the Frederick Avenue Bridge later that evening. Linemen Elliott and Cericola accepted this overtime assignment. There is no contention that such assignment violated Rule 55. Later that evening, only Lineman Elliott showed up for the predetermined overtime assignment; Lineman Cericola did not call or show up. The Carrier assigned Lineman Trainee Goode, who was present under his normal schedule, to assist Lineman Elliott in the protection work. Goode worked eight hours with Elliott and received straight time for such work. The Carrier made no attempt to get another qualified Lineman, such as the Claimant, to replace Cericola when he did not show up for his overtime assignment.

The Organization argues that the Carrier violated Rule 55 and the ET Training Agreement by scheduling an unqualified employee, in lieu of a qualified Lineman, to provide protection services on the claim date. It notes that the Carrier predetermined that two qualified Linemen were required to perform the protection work in issue, and filled the assignment in that fashion. The Organization asserts that by his very presence at this assignment, Trainee Goode worked in lieu of a Lineman and provided protection services, a function for which he is not qualified under ET rules. It seeks compensation for the Claimant, a qualified, available and senior Lineman, at the straight time rate, for this missed overtime opportunity.

The Carrier contends that the Organization failed to meet its burden of proving a violation of either Rule 55 or the ET Training Agreement. It asserts that there is no proof that Trainee Goode actually performed any protection services, or did anything other than assist Lineman Elliott, which is permissible under the Training Agreement. The Carrier further argues that, the failure of an employee to show up for a predetermined overtime assignment which was admittedly made in compliance with Rule 55, cannot convert its subsequent decision to cover that work with an employee on site into a violation of Rule 55. The Carrier argues that the mere fact that two Linemen were called does not establish that two Linemen were required.

A careful review of the record convinces the Board that the Organization met its burden of proving that the Carrier violated Rule 55 by its disputed assignment in this case. This is not a case of a call out, where the Carrier makes staffing decisions based upon information it has at the time and its determination of need for certain positions. This is a case of predetermined overtime, where the Carrier made the decision that two qualified

Class "A" Linemen were needed on overtime to perform the protection work in issue. That being the case, the Carrier cannot later assert that the Trainee assigned did not perform actual protection work on the job, and only assisted Lineman Elliott. There is no doubt that Trainee Goode worked in lieu of Lineman Cericola that night performing necessary protection services for which he was not technically qualified. Having shown that the Carrier predetermined the need for two Lineman on overtime for this assignment, its failure to seek another qualified Lineman to cover the absence violates Rule 55. See, Third Division Award 26508.

There is no question that the Claimant was a qualified Lineman available for this overtime assignment. Because this claim seeks payment for the Claimant at the straight time rate, no question of the appropriateness of the remedy is presented. Accordingly, the claim will be sustained.

AWARD

Claim sustained.

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 24th day of September 2002.