

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36295
Docket No. MW-36439
02-3-00-3-708**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Carrier violated the Agreement when it failed to call and assign B&B Foreman M. Lancianese and B&B Mechanic M. Bremer for overtime service (install drywall) at the West Yard Training Center in Wilmington, Delaware on June 12 and 13, 1999 and instead assigned junior employees (System Files NEC-BMWE-SD-3975 and NEC-BMWE-SD-3978 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Lancianese and M. Bremer shall now each be compensated for twenty-eight (28) hours' pay at their respective time and one-half rates 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.

This claim raises the issue of whether the Carrier's assignment of rest day overtime service installing drywall in the new West Yard Training Center to a B&B Foreman and Mechanic less senior than the Claimants, violates their seniority rights. Both Claimants and the junior employees assigned the overtime were regularly headquartered at Wilmington Station, not at the West Yard Training Facility where the overtime work was performed. The Claimants were members of Maintenance Gang C-122; the junior employees assigned the overtime were members of the Wilmington Station Construction Gang which falls under the same responsibility Center, the same supervisor and manager, and within the same zone as the West Yard Training Facility employees.

This claim involves the 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 that overtime must be awarded based upon seniority, and notes that it is undisputed that the Claimants held greater seniority than the mechanics assigned the disputed work. It contends that the Claimants were qualified and available to perform the work in issue that it is the type of work which they customarily perform, and that this was not a continuation of work previously started by either Claimants or those assigned, as neither group work at that location. The Organization takes issue with the Carrier's contention that this was construction type work, asserting that it failed to sustain its burden of establishing its affirmative defense that there were two separate type of mechanics within the Structures Department and a practice of assigning overtime based upon membership in one group as opposed to the other, citing Third Division Awards 30448, 30660, 32371, 29259, 28185, 35860. It seeks compensation at the overtime rate for lost work opportunities for the Claimants, citing Third Division Awards 26508, 26690 and 30448.

The Carrier asserts that its Structures Department is divided into maintenance and construction forces that the Claimants were part of a gang performing basic maintenance functions at the Wilmington Station, while those assigned were part of the

Wilmington Station Construction gang, who customarily perform this type of work, and that the Claimants had no demand right to this construction work, relying on Public Law Board No. 5512, Award 1. The Carrier contends that it was in compliance with Rule 55 and its past and current practice in assigning construction overtime first to construction gang members in the zone in order of seniority in accord with its overtime call out roster, citing Third Division Award 35642. The Carrier argues that the claim is excessive and that the appropriate rate for a lost overtime 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 35495, 27701, 28180, 28181 and 28349.

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. In Third Division Awards 35860 and 30685, the Board affirmed that the phrase "ordinarily and customarily" within Rule 55 could refer to the "type" of work or be interpreted to refer to the "continuation" or "completion" of work. In this case there is no contention that the disputed overtime assignment involved the continuation or completion of work performed by either Claimants or the junior employees assigned to it on a daily or regular basis. The Claimants' superior entitlement to the drywalling work herein must be established by a showing that it is the type of work "ordinarily and customarily" performed by them rather than the construction gang employees assigned. The Organization was unable to rebut the Carrier's showing that the drywalling involved the new construction being accomplished at the West Yard Training Facility, which is customarily performed by construction forces rather than the maintenance work routinely performed by the Claimants. Unlike the situation in Third Division Award 35642, where the Board found that the Carrier had not established on that record the practice of assignment of overtime by project only, prior cases have verified the Carrier's right to differentiate between construction and maintenance work. See Public Law Board No. 5512, Award 1; Third Division Award 35860. While the Claimants may have been available and qualified to perform the drywalling work, it was not the type of work which was ordinarily and customarily performed by them. Thus, the Carrier's assignment of such overtime to its construction forces did not violate the seniority provisions of Rule 55.

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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 28th day of October 2002.