

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37818
Docket No. MW-38444
06-3-04-3-401**

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 failed to call and assign B&B Mechanic R. Taylor to perform overtime service (snow removal) on January 6, 2003 and February 8, 2003 and instead called and assigned Welder R. Chaves (Carrier's File NEC-BMWE-SD-4301 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Taylor shall now be compensated for thirteen (13) hours at his respective overtime 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.

This claim protests the Carrier's calling B&B Structural Welder R. Chaves for overtime snow removal work on the two claim dates rather than the Claimant, a B&B Mechanic, as a violation of Rules 1, 53 and 55 of the Agreement. Both the Claimant and Chaves have the same work schedule and are assigned to the same headquarters. Chaves is senior to the Claimant. There is no dispute that Chaves performed the 13 hours of overtime snow removal work at issue, and that the Carrier made no attempt to call the Claimant first. There is no local overtime call-out agreement on the New England Division although the parties have had such discussions.

The Organization first argues that work of this nature has been reserved to BMWE-represented employees such as the Claimant by the Scope and Work Classification Rules as maintenance of buildings and other structures, which are the primary duties of B&B Mechanics, not Welders, relying on Third Division Awards 3822, 4531, 6627, 7053 and 23073. It next contends that snow removal work has historically and customarily been performed by B&B Mechanics who the Carrier called first, submitting statements from four employees indicating that Welders were only called to perform snow duty work after all B&B Mechanics had been exhausted. One of these employees had been Local Chairman for 12 years previously. The Organization posits that the Carrier failed to rebut by other than assertion its established practice of B&B Mechanics customarily and ordinarily performing snow duty before Welders, and Rule 55 requires that the work in issue be assigned to the Claimant rather than Chaves. It notes that the Carrier's failure to submit any evidence to support its affirmative defense that the practice has been to call out employees for snow duty based on overall seniority requires that it be dismissed, citing Third Division Awards 17051, 28759, 29505, 29854 and 30971. The Organization asserts that the mere fact that it snowed is not proof of an emergency, an affirmative defense also not proven by the Carrier, and the Carrier must make a reasonable effort to use employees stipulated by the Agreement even in emergency situations which this was not, citing Third Division Awards 21222 and 21224.

The Carrier contends that, in the absence of a local call-out agreement requiring that B&B Mechanics be given preference to this overtime work, the

practice on the property has been to call out employees for snow duty coverage based on overall seniority. It argues that Rule 55 has two components, seniority and regularity, and that the Organization is opposing seniority in favor of an alleged practice. The Carrier notes that snow removal is not the exclusive province of any class or craft by Agreement or practice, and is considered emergency work which all available forces have assisted in removing, citing Third Division Awards 28040 and 37005. The Carrier argues that the Organization failed to prove that the work belongs to Mechanics by custom and practice on a system-wide basis, noting that its own employee statements reveal that more than one class of employees have performed snow removal, and that, in the absence of such a showing, Rule 55 requires that seniority prevail, as it did in this case, citing Third Division 31925. Finally, the Carrier asserts that the requested remedy is excessive because it has been established that the proper rate for a missed overtime opportunity on this property is the straight time rate, relying on Third Division Awards 31129 and 35863; Public Law Board No. 4549, Award 1.

A careful review of the record convinces the Board that the Organization has not proven that snow removal work is reserved to B&B Mechanics under the Scope or Classification of Work Rules of the Agreement. See Third Division Award 37005. The question of whether there is a Rule 55 violation in this case turns on whether the Organization has proven that on this property snow removal is work that is customarily and ordinarily performed by B&B Mechanics to the exclusion of other classes or crafts so as to establish their preference for this type of work assignment. While the employee statements submitted claim that B&B Mechanics were called before Welders for snow removal, in contrast to the Carrier's assertion that overall seniority has been used for such assignments, it is clear that B&B Mechanics have not been the only class or craft performing snow removal work. It may well be that the B&B Mechanics called prior to Welders in the past were also more senior. The Organization admits that seniority is a valid factor to be considered in making overtime assignments under Rule 55. The evidence is insufficient to show that B&B Mechanics as a class are the ones who have customarily and ordinarily performed snow removal work on this property. In the absence of Agreement language or a local overtime call-out agreement giving preference to B&B Mechanics for this work, which, by its nature, does not permit much advanced scheduling regardless of whether a true emergency is established, the Board cannot conclude that the

Form 1
Page 4

Award No. 37818
Docket No. MW-38444
06-3-04-3-401

Organization established the Claimant's entitlement to the disputed work in preference to more senior Chaves. See Third Division Award 31925.

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 21st day of June 2006.