

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38193
Docket No. MW-38616
07-3-04-3-644

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Carrier violated the Agreement when it failed to call and assign Electrician E. Wilson to perform electrician duties on overtime on October 30, 2003 and instead assigned junior employe R. Kane (System File NEC-BMWE-SD-4387 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Wilson shall now be compensated for nine (9) 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.

At the time this dispute arose, the Claimant held a substation Electrician's position in the Electric Traction Department on a gang headquartered at Baltimore, Maryland. On October 30, 2003, the Carrier assigned overtime to a Foreman, a Gang Foreman, four Electricians, and Electronic Technician to address hot spots in Sub 25, Washington Terminal. The Claimant was not one of the Electricians assigned to work the overtime. The dispute in this case is the assignment of overtime to the Electronic Technician (R. Kane) as opposed to the Claimant.

The Carrier's stated reasons for assigning overtime that date to an Electronic Technician were to ensure the continued operation of the remote terminal unit and to troubleshoot and/or repair any technical problems that could result in a loss of power to the railroad and to ensure a quick response in order to avoid any delay in the supply of power onto the electrification system should the remote terminal unit fail. Those are duties falling within the Electronic Technician's job and the Carrier had the right to determine that an Electronic Technician might be needed for the job necessitating the overtime assignment.

The Organization asserts that, in fact, the Electronic Technician performed Electrician's work during the assignment. The Carrier asserts that Kane had the ability to do so and, in any event, the Electrician's work Kane may have performed was within the range of his abilities and was de minimis. The direct evidence supporting the Organization's assertion that Kane improperly performed Electrician's work comes from a statement in the record from Electrician M. Shertzer. According to Shertzer, Kane ". . . worked on the night of October 30, 2003 into October 31, 2003 as a Electrician, taking power then working on disconnects that were involved with the power." From that statement, we are unable to determine the extent of the claimed Electrician's work performed by Kane that night. But the burden is on the Organization to show the extent of the claimed Electrician's work performed by Kane. The general statement of what Kane may have done in addition to his Electronic Technician duties is insufficient to rebut the Carrier's assertion that the claimed Electrician's work performed by Kane was, in any event, de minimis. We, therefore, do not have to address the question of whether and to what extent an Electronic Technician can perform Electrician's work when the Carrier finds itself in the situation of fortunately not facing the situation where the Electronic Technician would actually be needed for a power failure. We do note that there is also a statement in the record from the Claimant

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concerning this dispute. However, the Claimant was not at the job site and therefore had no first hand knowledge of what Kane may have done.

Based on the above, the Organization has not carried its burden. The claim will therefore be denied.

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 May 2007.