

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38208
Docket No. MW-38685
07-3-05-3-69

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 Lineman U. Benjamin and Lineman M. Tigue to perform pre-determined overtime service on November 2, 2003 and instead called and assigned Lineman Trainees D. Casabianca and B. Kilgore (System File NEC-BMWE-SD-4414 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants U. Benjamin and M. Tigue shall now be compensated for nine (9) 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.

At the time this dispute arose, the Claimants held Electric Traction Linemen positions on line Gang P-111 headquartered at Hunter Street Yard, working 10:00 P.M. - 6:00 A.M., Saturday and Sunday rest days. D. Casabianca and B. Kilgore were Electric Traction Linemen Trainees on line/construction Gang P-283 headquartered at Secaucus with the same assigned hours and rest days as the Claimants.

On Sunday, November 2, 2003, pre-determined overtime was assigned to Gang P-283 on a reconfiguration project at Hudson Interlocking - a project which Gang P-283 had been working on during the previous workweek. On that date, two Gang Foremen, five Electric Traction Linemen, two Linemen and four Electric Traction Trainees (including Trainees Casabianca and Kilgore) assigned to Gang P-283 worked the overtime. The Claimants - who were observing their rest day and who had greater seniority than Casabianca and Kilgore - were not offered the overtime opportunity. These consolidated claims followed.

Rule 55(a) provides:

RULE 55 PREFERENCE FOR OVERTIME WORK

- (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.

* * *

Section III(c)(1) of the Electric Traction Department Training Agreement provides:

III. c) Trainees will perform any work done by a qualified Mechanic or such other work as is assigned in connection with his training, but:

(1) Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory, established in accordance with the Agreement dated April 27, 1977."

Under Rule 55(a) the Claimants appear to have preference for the overtime over Trainees Casabianca and Kilgore for the overtime work on November 2, 2003. However, under Section III(c)(1) of the Electric Traction Department Training Agreement and consistent with the Organization's burden in this case, there must be some kind of showing by the Organization to demonstrate that Trainees Casabianca and Kilgore worked "... in lieu of a qualified mechanic. . . ." The Organization has not made that showing. On the date in question, in addition to Trainees Casabianca and Kilgore, five Electric Traction Linemen were assigned overtime on the project. There is no evidence presented by the Organization that during that overtime assignment, Trainees Casabianca and Kilgore worked "... in lieu of a qualified mechanic. . . ." [Emphasis added.]

Prior Awards between the parties relied upon by the Organization are distinguishable from this case. In Third Division Award 30686 "... the Carrier did not argue any contrary meaning as to the Trainee Agreement . . . [and s]pecifically did not rebut the Organization's position that the Trainee was working 'in lieu of a qualified mechanic.'" Third Division Award 30686 (a sustaining Award) was "... virtually identical to that reviewed in Third Division Award 30685 and the Findings therein are incorporated here by reference." In Third Division Award 30685 (where it was concluded that "... the Board does not find the Carrier's action in Rule violation") the dispute was whether a junior Foreman who was assigned the overtime over the senior claimant in that case performed "... work ordinarily and customarily performed . . ." under Rule 55. The Board found in Third Division Award 30685 that "... the phrase 'ordinarily and customarily performed' refers to installation work and construction work . . . and more particularly to the project in

which the junior employee (and his Gang) was performing within the same workweek in which the overtime occurred.” But the point of Third Division Award 30686 (which relied upon Third Division Award 30685) cited by the Organization is that “. . . the Carrier did not argue any contrary meaning as to the Trainee Agreement . . . [and s]pecifically did not rebut the Organization’s position that the Trainee was working ‘in lieu of a qualified mechanic.’” Here, on the property, the Carrier did make that argument and showing. As described in its August 10, 2004 letter, the Carrier asserted that in addition to the fact that five Electric Traction Linemen were assigned overtime, the Trainees “. . . simply were assisting the gang to which they were assigned in order to become familiar with and understand the duties of the qualified Linemen assigned to work on the Hudson Reconfiguration Project. . . .” Further, in that letter, the Carrier noted that “[c]ertain work performed by qualified Linemen can be performed only outside regular working hours when the power is shut off, and in order for the Trainees to become fully cognizant of all aspects of Linemen work, the Trainees are utilized in their training capacities on overtime, such as in the instant case, and said Trainees were not utilized in lieu of qualified Linemen as alleged by the Organization.” In short, the Carrier argued and showed in this case what it did not properly argue or show in Third Division Award 36086.

Similarly, Third Division Award 35863 is not supportive of the Organization’s position in this case because in that Award, “. . . the record on the property does not present any contrary interpretation of the ‘in lieu of’ language in the MOA than that asserted by the Organization or that found in Third Division Award 30686.” Here, as discussed above, the Carrier made the argument and showing not made in those Awards. Further, in Third Division Award 35863, the Board noted that “[t]he Carrier failed to present any proof that Trainees were always assigned overtime when their gang was, despite the existence of qualified Mechanics within the territory.” We have not decided this case on that argument. We have only found that the Organization failed to rebut the Carrier’s on-property argument and showing that the Trainees were performing Trainee functions and were not working “in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory. . . .” particularly given the fact that five Electric Traction Linemen were assigned overtime on the date in dispute.

Third Division Award 36239 cited by the Organization is clearly distinguishable because, in that case, two Linemen were assigned the overtime and one did not show up for the work. The Carrier then assigned a Trainee without canvassing for another qualified Lineman, causing the Board to conclude that “[h]aving 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.” That is not this case.

Likewise, Third Division Awards 37094 (which involved a dispute over whether the claimants therein were “available” or “qualified”) and 37658 (which involved a dispute over whether the claimant therein was “. . . unfit to perform the assignment due to the number of hours he would have worked”) are clearly inapplicable to this dispute.

Finally, the Organization cited prior denials of claims by the Carrier where Trainees were the claimants and were denied overtime opportunities, with the Carrier stating that “[i]t is Amtrak’s policy when it comes to pre-determined overtime, the Carrier has to utilize all qualified employees in the work zone prior to utilizing the trainees.” As explained by the Carrier on the property, in those cases the Carrier determined that additional qualified Linemen were needed on overtime and, therefore, Rule 55 and the Electric Traction Department Training Agreement dictated the use of qualified Linemen over Trainees. Here there is no evidence that more qualified Linemen were needed in addition to the qualified Linemen who were assigned the overtime.

The Board’s denial of this specific claim does not have the result of granting Trainees “super-seniority” as argued by the Organization. The governing provision in the Electric Traction Department Training Agreement is clear: “Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory. . . .” Here there is no evidence that Trainees Casabianca and Kilgore were doing so on November 2, 2003. Based on the record presented, we can only conclude that during the overtime on November 2, 2003, Trainees Casabianca and Kilgore were only working as Trainees.

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

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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 25th day of June 2007.