

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38211
Docket No. MW-38884
07-3-05-3-320

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 Division –
(IBT Rail Conference
(
(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 Foreman A. Alessi to perform overtime service with Gang G-412 on March 26, 2004 and instead called and assigned junior Foreman H. Thomas (System File NEC-BMWE-SD-4442 AMT).
- (2) The Agreement was violated when the Carrier failed to call and assign Foreman A. Alessi to perform overtime service (provide contractor protection) on March 27, 2004 and instead called and assigned junior Foreman G. Partlowe (System File NEC-BMWE-SD-4445 AMT).
- (3) As a consequence of the violation referred to in Part (1) above, Claimant A. Alessi shall now be compensated for all overtime hours earned by junior employee H. Thomas on March 26, 2004.
- (4) As a consequence of the violation referred to in Part (2) above, Claimant A. Alessi shall now be compensated for all overtime hours earned by junior employee G. Partlowe on March 27, 2004.”

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, H. Thomas was a Foreman on Gang G-062 (a maintenance gang headquartered in North Philadelphia); G. Partlowe was a Foreman on Gang G-052 (a maintenance gang headquartered at Penn Coach Yard); and the Claimant was a Foreman on Gang G-133 (a material clean up gang headquartered at Penn Coach Yard). The Claimant was senior to Thomas and Partlowe.

On March 26, 2004, the Carrier assigned Thomas overtime to assist Gang G-412 (a maintenance gang headquartered at Penn Coach Yard). On March 27, 2004, the Carrier assigned Partlowe to provide contractor protection in the area of Wynnewood Train Station. According to the record, the overtime work assigned to Thomas and Partlowe on March 26 and 27, 2004 was work those employees ordinarily performed as part of their gang assignments. These consolidated claims assert that the Claimant's superior seniority entitled him to the offered overtime over junior Foremen Thomas and Partlowe.

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."

The overtime assignments on March 26 and 27, 2004 were for track maintenance and contractor protection - work which was ordinarily and customarily performed by the junior Foremen given that work. The Claimant worked on a material clean up gang. Under Rule 55(a), the Claimant did not "... ordinarily and customarily perform ..." the disputed work. The junior Foremen did ordinarily and customarily perform that work. Because the Claimant did not ordinarily and customarily perform the disputed work and the junior Foremen did, the Claimant had no seniority entitlement over the junior Foremen for the disputed work. No Rule violation has been shown.

Based on the above, the Organization failed to satisfy its burden of proof. 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 25th day of June 2007.