

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39924
Docket No. MW-39851
09-3-NRAB-00003-060656
(06-3-656)

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 Carrier violated the Agreement when it called and assigned junior B&B Foreman T. Kralle to perform overtime B&B Foreman service on August 12, 2004 instead of B&B Foreman A. Peterson (System File NEC-BMWE-SD-4562 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A Peterson shall now be compensated at his applicable rate of pay for the four (4) overtime hours worked by junior employe T. Kralle on August 12, 2005.”

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.

On the morning of August 12, 2005, the Carrier assigned a Plumber to shut down the water feed valves to facilities in 30th Street Station in Philadelphia. The valves are located in the mechanical tunnels under the station and Carrier policy does not allow employees to work in that area alone. Consequently, the Carrier assigned B&B Mechanic Foreman T. Kralle to accompany the Plumber. This occurred during Foreman Kralle's regular shift. Later in the day, a tenant complained that it had no water and therefore could not operate. The Carrier assigned a Plumber to turn on the water feed valve and again assigned Foreman Kralle, this time on overtime, to accompany the Plumber. There is no dispute that the Claimant had greater seniority and was available to perform the work. The Carrier justified its assignment of Foreman Kralle on the ground that Foreman Kralle also held seniority as a Plumber. However, the record reflects that Foreman Kralle worked as a B&B Mechanic Foreman, not as a Plumber. His assignment was not to turn on the valve, but to accompany the Plumber who was assigned to turn on the valve. In these circumstances, Rule 55(a) required the Carrier to offer the assignment to the Claimant.

There is a dispute as to the remedy. The Organization asks that the Carrier compensate the Claimant for four hours at the overtime rate. The Carrier objects, urging that on this property, denials of overtime opportunities are compensated at the straight time rate. The Carrier is correct and, except for an occasional outlier, the Awards firmly establish that on this property, denials of overtime opportunities are compensated at the applicable straight time rate. Accordingly, the Carrier shall compensate the Claimant for four hours at the straight time rate. See, e.g., Third Division Award 35863.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of August 2009.