

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39948
Docket No. MW-40081
09-3-NRAB-00003-070271
(07-3-271)**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 New Haven Subdivision B&B Mechanic D. Cerrito to perform overtime service (snow removal) at all stations on the Mill River to Springfield line on December 31, 2005 and instead called and assigned Production Gang employees B. Drain, A. Johnson and B. McNerny (System File NEC-BMWE-SD-4594 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Cerrito shall now be compensated for sixteen (16) hours of overtime at his respective and applicable 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.

The basic facts underlying the instant claim are not in dispute. On the date in question, the Carrier called B. Drain, A. Johnson and B. McNerny, who were regularly assigned to a production gang, on overtime to perform snow removal work and did not call the Claimant, who was regularly assigned to a maintenance gang. The employees who were called had greater seniority than the Claimant. The Organization contends that the Carrier violated Rule 55(a), which provides:

“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 seniority.”

The Organization argues that snow removal work was ordinarily and customarily performed by maintenance gangs rather than production gangs. The Carrier maintains that there was no local overtime callout agreement on the New England Division requiring preference for maintenance gangs over production gangs for snow removal, but rather that a long-standing practice on the Division was to call out all employees in seniority order for snow removal. We note that such local practice was observed in Third Division Award 37818. In any event, in the absence of a local overtime callout agreement, and with conflicting assertions as to whether production gangs ordinarily and customarily performed snow removal work, the Organization had the burden to prove that maintenance gangs were preferred over production gangs for snow removal.

The Organization offered a statement from the Claimant that on December 30, 2005, his supervisor canvassed all gang members asking if they would be available for snow removal the following day, New Year's Eve, and that the

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Claimant responded that he was available. However, that the Carrier canvassed the maintenance gang members about their availability for overtime snow removal does not mean that the production gang members did not also customarily and ordinarily perform the same work. We conclude that the Organization failed to prove a violation of Rule 55.

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 30th day of September 2009.