

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41097
Docket No. MW-41231
11-3-NRAB-00003-100085**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

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 Mr. S. Di Iorio to overtime service of operating a backhoe on September 14, 2008 and instead called and assigned junior employee K. Cavanaugh (Carrier’s File NEC-BMWE-SD-4810 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Di Iorio shall now be compensated at his applicable overtime rate of pay for all overtime hours worked by junior employee K. Cavanaugh on September 14, 2008.”**

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 claim, dated September 16, 2008, alleges that the Carrier violated Rule 55 (Preference for Overtime Work) when it assigned a junior employee 7:00 A.M. - 3:00 P.M. overtime on Sunday, September 14, 2008 for the operation of a backhoe near Providence, Rhode Island, instead of offering the assignment to the Claimant.

The progression of this claim on the property shows that it was processed in the usual and customary manner including placement before the highest officer of the Carrier designated to handle it. Following a conference discussion on April 28, 2009, the Organization filed a timely notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

The Claimant and the junior employee have the same regular tour of duty (10:30 P.M. - 7:00 A.M., Sunday through Thursday) and the same rest days (Friday and Saturday). Although assigned to different gangs, both employees are required to hold a commercial driver's license (CDL) to operate vehicles for the Carrier.

CDL Operators are subject to federal regulations in the performance of their duties. For example, Federal Motor Carrier Safety Regulations, Hours of Service, 49 C.F.R. - Part 395, state that "Property-Carrying CMV Drivers may not drive beyond the 14th hour after coming on duty, following 10 consecutive hours off duty."

The regulations provide, further, that "[d]river's of property-carrying CMV's which do not require a CDL for operation . . . may not drive after the 14th hour after coming on duty 5 days a week or after the 16th hour after coming on duty 2 days a week."

Applying these regulations to the record evidence reveals that the Claimant was not available for the September 14, 2008 overtime assignment. The Claimant had an eight hour overtime shift (10:30 P.M., September 13 — 7:00 A.M., September 14). The Claimant's regularly scheduled tour of duty began at 10:30

P.M. on September 14. Had the Claimant worked the disputed overtime (7:00 A.M. — 3:00 P.M., Sunday, September 14) it would have been as a continuation of his shift ending at 3:00 P.M. on September 14 for a total of 16 hours.

In other words, had the Claimant worked the overtime hours in question, he would have worked beyond the 14th hour in violation of the federal regulation. Under this circumstance, the Carrier determined that the Claimant was not available for the contested overtime and offered it to the next senior employee who was qualified and available to work.

Contrary to the Organization's argument, offering the assignment to K. Cavanaugh did not place him in violation of the federal regulation. Cavanaugh did not work on his rest day (Saturday, September 13) whereas the Claimant worked an eight-hour overtime shift. Cavanaugh did work the 7:00 A.M. — 3:30 P.M. overtime on Sunday, September 14 (the contested work) but he followed that with a vacation day instead of reporting for his regular shift (10:30 P.M., Sunday — 7:00 A.M., Monday). Cavanaugh returned for his regular schedule (10:30 P.M., Monday — 7:00 A.M., Tuesday).

Although the operation of the backhoe does not require a CDL, the Claimant was not available for the disputed overtime assignment because he would have less than ten hours of rest prior to the start of his regular shift that began on the same evening as the claimed overtime hours.

The Claimant received preference for the overtime assignment he accepted for his rest day (Saturday, September 13). The Claimant was qualified for the contested overtime work, but he was not available due to the requirements of the federal regulation applicable to his position. In short, the Claimant cannot work more than 14 continuous hours without the required ten hours of rest as stipulated in the governing regulation.

Given these findings, the Board concludes that the Organization failed to establish a violation of Rule 55. Accordingly, the claim is 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 18th day of October 2011.