

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41150
Docket No. MW-41048
11-3-NRAB-00003-090412**

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)
(– 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 Mr. W. Leischner to overtime service on March 30 and 31, 2008 and instead called and assigned junior employee K. Hicks (Carrier’s File NEC-BMWE-SD-4758 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Leischner shall now be compensated for nine (9) hours at his respective time and one-half 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 claim, dated April 2, 2008, alleges that the Carrier violated Rule 1 (Assignment to Positions), Rule 10 (Seniority), Rule 53 (Calls) and Rule 55 (Preference for Overtime Work) when it assigned a junior employee to perform structural welding at Mile Post 116.7 at the Niantic River Bridge in Connecticut, instead of assigning the work to the Claimant, a senior Structural Welder.

The progression of the claim on the property reveals 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 November 6, 2008, the claim is now properly before the Board for adjudication.

The record shows that pursuant to Rule 55, the Carrier assigned the Claimant to perform overtime service from 6:00 A.M. to 7:00 P.M. on March 30, 2008 because he was the most senior employee available and qualified to perform the work. At some point during the Claimant's 6:00 A.M. to 7:00 P.M. overtime assignment, the Carrier determined that an additional overtime assignment would be required at that location, and that such additional overtime shift would work from 10:00 PM to 7:00 AM. That determination was made after the Claimant had accepted and commenced his 6:00 A.M. to 7:00 P.M. overtime assignment. The Carrier offered the 10:00 P.M. to 7:00 A.M. overtime assignment to the next most senior qualified and available employee after the Claimant.

The Organization's claim is that the Carrier was required by Rule 55 to offer the overtime to the senior employee, i.e., the Claimant. The Claimant was available because his overtime assignment concluded at 7:00 P.M. and further overtime did not commence until 10:00 P.M. Furthermore, the Foreman on the Claimant's overtime assignment worked the 10:00 P.M. to 7:00 A.M. overtime.

The Carrier counters by pointing out that had the Claimant worked the 10:00 P.M. - 7:00 A.M. overtime assignment, it would have concluded at the same time

that the Claimant's regularly assigned shift commenced (7:00 A.M.). As a consequence, the Claimant would have been working 30 out of 33 hours. In the Carrier's view, the Claimant was not available for the overtime assignment at issue in the claim because he had been afforded preference for, accepted and was working the initial overtime assignment when there was a determination that further overtime was needed.

The issue before the Board is whether the Claimant was available for the 10:00 P.M. to 7:00 A.M. overtime.

Instructive is Third Division Award 36044, wherein the Board held:

“ . . . There is no doubt here that the Carrier recognized its Rule 55 obligation to offer overtime work opportunities to Linemen in order of seniority on September 11, 1998, and did so. The Claimant accepted overtime assignments for both Saturday and Sunday, September 12 and 13, 1998 during the morning of September 11, 1998. This commitment enabled the Carrier to put together the necessary work force to perform the scheduled overtime. When unanticipated overtime became available later in the day, the Carrier offered it to the next most senior employee, herein Trainee Arnold, who had not previously been offered and accepted overtime that day. The Organization failed to prove that the parties intended the Carrier's obligation under Rule 55 to be interpreted to require the Carrier to continually realign its planned overtime work force on each occasion when another unscheduled assignment subsequently arises during the same period.”

Applying the reasoning found in Award 36044 to the circumstances in this claim, the Board concludes that the Claimant was not available. We find specifically that the Carrier met its obligation to the Claimant under Rule 55 when it offered, and the Claimant accepted the overtime assignment from 6:00 A.M. to 7:00 P.M. When the need for further overtime arose after the Claimant had accepted and began his overtime assignment, the Carrier offered the further overtime to the most senior qualified and available employee.

Rule 55 does not require the Carrier to offer the 10:00 P.M. to 7:00 A.M. overtime to the Claimant when that assignment arose at some point after the Claimant had accepted and commenced his overtime assignment.

As for the Foreman, he did not work the complete 6:00 A.M. – 7:00 P.M. overtime assignment as did the Claimant. Rather, the Foreman left during that assignment to rest and be available for the 10:00 P.M. – 7:00 A.M. overtime. The Carrier determined that the Foreman's presence during the entirety of the Claimant's overtime assignment was not necessary, but the Foreman's availability for the subsequent overtime was critical given the absence of another available Foreman.

Based on these findings and conclusion, no violation of the Agreement occurred. Accordingly, the claim will 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 21st day of November 2011.