

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41152
Docket No. MW-41169
11-3-NRAB-00003-100015**

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. C. Fallin to overtime service on July 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 29, 30, 31, August 4 and 5, 2008 and instead called and assigned junior employee D. White (System File NEC-BMWE-SD-4774 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Fallin shall now be compensated for a total of one hundred sixty-nine (169) 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 August 8, 2008, alleges that the Carrier violated Rule 55 (Preference for Overtime Work) when it assigned a junior employee to perform Roadway Worker Protection (RWP) duties in the B&P Tunnels, MP 97, Baltimore, Maryland, on the contested dates.

The progression of the claim on property reveals it was processed in the usual and customary manner, including placement before the Carrier's highest officer designated to handle it. Following a conference discussion on February 19, 2009, the claim is now properly before the Board for adjudication.

On April 1, 2008 the Assistant Division Engineer and American Railway Supervisors Association (ARSA) Supervisor-B&B informed the B&B Baltimore subdivision group about the need for Roadway Worker Protection for the Tunnel Structural Repair Project (Baltimore) and the opening of the Bush River Bridge (Perryville). For the duration of the projects (May - August 2008) protection of roadway workers was required and would be assigned from among the 80 employees. To meet the Roadway Worker Protection staffing requirement, a schedule was posted each Thursday for employees to sign to request overtime work.

By letter dated September 22, 2008, the Claimant acknowledges the April 1, 2008 meeting about the discussion of scheduled overtime and the procedure to be followed (sign-up sheets). The Claimant, aware of the procedure, decided not to follow it, so his name did not appear on sign-up sheets for overtime. Thus, he was not scheduled or otherwise contacted for this overtime work.

Rule 55 extends preference for overtime work - "including calls" - to employees available and qualified based on seniority. The Claimant's letter exhibits his displeasure with the sign-up procedure, contending that the Carrier neither called nor contacted him to offer him the overtime work in accordance with his seniority. However, the Carrier is not restricted by Rule 55 in the manner argued by the Claimant. The measures undertaken by the Carrier to satisfy Rule 55 were

broadcast and distributed equally in the group including the Claimant. Further, the Claimant was not disadvantaged by the sign up procedure. Neither is there any showing that the Claimant was not afforded preference for overtime work in accordance with his seniority. As for the Call-Out list submitted by the Organization, there is no showing in the record that that list is applicable or relied upon when overtime work is scheduled in advance rather than being performed in a call out situation.

The Organization failed to establish that the Carrier's actions and decision in this situation violated Rule 55. In the absence of sufficient proof to establish a violation, 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.