

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41688  
Docket No. MW-41982  
13-3-NRAB-00003-120352**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Foreman S. McCormick, who was the senior qualified employe to overtime work (inspect concrete ties between Mile Posts 223 and 227) in Boston, Massachusetts on Sunday, March 6, 2011 from 5:00 A.M. to 3:00 P.M. and instead called and assigned Mr. P. Crawford (System File NEC-BMWE-SD-4980 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. McCormick shall now be compensated for ten (10) 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.

This overtime assignment claim involves the issue of what is meant by "qualification" in the following applicable Rules:

**"RULE 1 - ASSIGNMENT TO POSITIONS**

**In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern.**

**RULE 55 - PREFERENCE FOR OVERTIME WORK**

**(a) 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 their seniority.**

**NEW ENGLAND OVERTIME CALL ORDER FOR BMW  
ROUTINE MAINTENANCE**

<b>First Call</b>	<b>I&amp;R Foreman assigned to section of Subdivision.</b>
<b>Second Call</b>	<b>Senior I&amp;R Foreman working in class within the Subdivision.</b>
<b>Third Call</b>	<b>Senior rostered qualified Track Foreman (working in class) within the Subdivision."</b>

On the claim date, Sunday, March 6, 2011, the Claimant was assigned as a Foreman (Lubricator) working on Maintenance Gang S-455, and had an April 7, 1997 Foreman seniority date on the Northern District roster. Crawford was assigned as a Foreman (I&R) on Inspection & Repair Gang S-482, and had a June

17, 1996 seniority date on the Northern District roster. The Carrier needed an I&R Foreman to inspect concrete ties between Mile Posts 223 and 227 in Boston on Sunday, March 6, 2011 between 5:00 A.M. and 3:00 P.M., and called Crawford to perform the overtime work. This claim resulted, seeking ten hours at the overtime rate for the Claimant, based upon the Organization's position that Crawford was not qualified on the physical characteristics of the territory, but the Claimant was.

The Organization argues that it is undisputed that Crawford was not qualified on physical characteristics and the Claimant was. It asserts that being qualified on physical characteristics is a necessary condition to being assigned to a Foreman position, as noted in advertisements for such positions. Because Crawford was not qualified for the overtime assignment, the Organization posits that the Carrier violated the Agreement when it called him rather than the Claimant, who was the senior rostered qualified Foreman on the Subdivision. The Organization notes that the appropriate remedy for the loss of an overtime opportunity is payment at the overtime rate that he would have received if properly assigned, relying on Third Division Awards 26508, 26690, 38212, 41147.

The Carrier contends that it adhered to the Overtime Call Order Agreement by calling Crawford when the I&R Foreman assigned to the section was not available, because he met the requirements for the "Second Call." It asserts that such Agreement does not limit qualified candidates to those having physical characteristics qualifications of the territory on which the assignment is located. The Carrier notes that Crawford was actively working as an I&R Foreman on the Subdivision, he was qualified to perform the work, and because he would be working under the authority of another employee who was qualified on the physical characteristics of the territory to provide on-track protection, he was "sufficiently qualified" under Rules 1 and 55, to be given preference to this overtime. Additionally, the Carrier argues that the requested remedy is excessive, because it has been held on this property that the proper rate for a lost overtime opportunity is the straight time rate, relying on Third Division Awards 31129 and 35863.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement. There is no dispute that Crawford met the requirements for the "Second Call" under the Overtime Call Order Agreement, whereas the Claimant fell under the "Third Call"

category, or that Crawford was senior to the Claimant. We find no merit to the Organization's position that in order for an employee to be qualified for an overtime call, he has to meet all of the bulletined qualifications for the job under all circumstances. The language agreed to by the parties in the Overtime Call Order Agreement does not say that. Under Rule 1, the Carrier can determine if qualifications are "sufficient" for an assignment. In this case, because Crawford would be working under another employee with qualifications on the physical characteristics of the territory to properly provide on-track protection, it was not a violation of the Agreement for the Carrier to determine that Crawford had sufficient qualifications to perform the work in question, and to utilize the Call Order negotiated by the parties in making the disputed overtime assignment. Thus, the claim must fail.

**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 June 2013.