

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41689  
Docket No. MW-42088  
13-3-NRAB-00003-130044**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employes 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 offer and assign Electric Traction Lineman G. Anirina to the overtime assignment at the Harold Interlocking, Sunnyside Yard, New York, on August 9, 2011, and instead assigned ET Lineman Trainee R. Honeycutt (System File NEC-BMWE-SD-4997 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Anirina shall now ‘. . . be compensated amount of compensation he would have earned which equals, eight (8) hours at his respective lineman’s rate and thirty (30) dollars for meals afforded to cited employee, Randy Honeycutt.’”**

**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 application of the following applicable Rules, and raises the issue of whether the Claimant was available to perform the subject overtime.

#### **“RULE 1 - ASSIGNMENT TO POSITIONS**

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

The word ‘seniority’ used in this Rule 1 means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes . . . .

#### **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.

#### **MEMORANDUM OF AGREEMENT (October 1, 1980)**

III. (c) Trainees will perform any work done by a qualified Mechanic or such other work as is assigned in connection with his training, but:

(1) Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory . . . .”

Both the Claimant and Trainee Honeycutt worked on Gang P-255 from 10:00 P.M. to 6:00 A.M., Sunday through Thursday. Foreman Goddard had pre-planned necessary overtime the prior day, but after the shift ended at 6:00 A.M. on Tuesday, August 9, 2011, Goddard was asked to find another employee to work overtime from 6:00 A.M. to 2:00 P.M. to provide protection work for the TLS Unit in Sunnyside Yard. According to Goddard’s written statement, at the time he learned of the additional

overtime, the Claimant was no longer at headquarters, having just left by train for Penn Station on his way home. Goddard stated that he tried to call the Claimant but he did not answer, so he canvassed the qualified employees on the property in seniority order, resulting in the assignment to Honeycutt. The overtime was to begin immediately at 6:00 A.M. and could not be delayed until the Claimant could be reached and offered the assignment. The Claimant's written statement indicates that he was at headquarters at quitting time, as shown by his timesheet, which confirms that he was paid for eight hours that day, and asserts that he was never notified of the overtime or contacted by phone.

The Organization argues that it is undisputed that the Claimant is superior in seniority to Honeycutt, who was working as a Lineman Trainee, and is qualified to perform the disputed overtime, which was work that fell within his routine assignment. It asserts that the Carrier violated the Agreement by assigning a Trainee in lieu of the Claimant, a qualified, available Lineman. The Organization also contends that no attempt was made to call the Claimant, noting that the Carrier never indicated that Foreman Goddard had tried to call the Claimant in its first two denials (where it merely relied upon the fact that he had left the property) or until after conference. The Organization argues 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 38191 and 38212.

The Carrier contends that it complied with its contractual commitments in assigning the unplanned overtime work on August 9, 2011. It relies upon Foreman Goddard's written statement confirming that the Claimant had already left the property and was in transit when he learned about, and canvassed for, the overtime in question, as well as for the information it contained that he did attempt to call the Claimant, but there was no answer, in support of its argument that the Claimant was unavailable for the overtime assignment in question, citing Third Division Awards 37149 and 39923. The Carrier asserts that the Organization failed to sustain its burden of proving a violation of the Agreement, and, at best, there is an irreconcilable dispute in fact which requires that the claim be dismissed, relying on Third Division Awards 28794 and 37822. 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 27146, 31129, 35495, and 37003.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement. From its first denial, the Carrier took the position that the Claimant was unavailable for the overtime assignment because he had already left the property when Foreman Goddard learned at around 6:00 A.M. that he had to canvass for another person to work overtime providing protection for the TLS Unit in Sunnyside Yard, and that the job was to commence immediately. This position was supported by a signed statement from Foreman Goddard on the property. While the Claimant submitted a statement indicating that he (1) was present at headquarters at the end of his shift (6:00 A.M.) (2) was paid for eight hours that day, and (3) was not canvassed nor called for this overtime assignment, at best this raises an irreconcilable dispute of fact as to the Claimant's availability that the Board is not empowered to resolve. See, Third Division Awards 28794 and 37822. While there is no dispute that the Claimant was senior and qualified, because the Organization failed to establish that the Claimant was also available for the overtime assignment in question when it was needed - all prerequisites to proving a violation of Rule 55 - 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.**