

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41796
Docket No. MW-42119
13-3-NRAB-00003-130069**

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: (

(Pan Am Railways/Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign road truck service to senior Work Equipment Maintainer D. Conner on February 7, 8 and 11, 2011 and instead assigned said service to a junior employe (Carrier’s File MW-11-07).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Conner shall now be compensated for a total of seventeen and one-half (17.5) hours at his respective overtime 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 is a preference for overtime claim arising under the following provisions of Article 10 - Overtime:

“10.4 Overtime will be assigned in the following manner:

(a) Overtime immediately following the regular assigned work period will be given to the incumbent(s) of the position or crew.

*** * ***

(c) Planned overtime, rest day, and holiday work will be given in seniority order to available qualified employees in the territory of the work involved who ordinarily and customarily perform such work”

The facts of the instant dispute establish that both the Claimant and McCaw were regularly assigned as Work Equipment Repairmen headquartered in Waterville, Maine, and that the Claimant had superior seniority to McCaw in that classification. The Work Equipment Sub-Department only has one classification - Work Equipment Repairman (WER). On February 7, 8 and 11, 2011, McCaw was assigned by his Assistant Manager to use the work truck to perform road work during his regular work hours. The overtime in dispute was worked on those dates in this assignment.

The Organization argues that the Claimant’s seniority rights were violated when the Carrier did not assign him to this “planned overtime” road work. It asserts that historically, the most senior WER was assigned to road work, which has “a good chance” for overtime service. The Organization contends that if a WER is assigned to road work, the overtime resulting is “planned overtime” and properly assigned under Article 10.4(c) in order of seniority. It maintains that senior employees should be given the first opportunity for any overtime work assignment

that should arise in the course of the daily work projects. The Organization requests the amount of lost overtime attributable to this assignment.

Conversely, the Carrier contends that whatever overtime was worked during the claim period by McCaw was unplanned overtime assigned in accordance with Article 10.4(a) because it was immediately following his regular assignment. It asserts that it is the Carrier's prerogative to select any employee to perform work within his job classification, and that the parties' Agreement does not require it to select the senior employee for this straight time work assignment away from headquarters, noting that there is no special classification within the Work Equipment Sub-Department for road work. The Carrier argues that it has the flexibility to make work assignments using Work Equipment Repairmen to best meet the needs of the Carrier's service, a right not restricted by seniority in the parties' Agreement, and that an alleged past practice does not become a part of the Agreement or take precedence over its agreed upon terms. The Carrier further contends that the Organization failed to establish any damages suffered by the Claimant, who was assigned to work within his classification in the shop, and notes in response to the Organization's contention that the Claimant was qualified to perform the road work in issue, that the Claimant's supervisor confirmed that the Claimant is less capable and competent than other Work Equipment Repairmen when performing road work.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Article 10.4. The overtime in dispute arose in conjunction with the Carrier's proper assignment of McCaw to road work during the claim period. Thus, such was his regular assignment, and the disputed overtime was a continuation of such assignment, and properly assigned to McCaw pursuant to Article 10.4(a). Unlike the situation in Third Division Award 41795, McCaw was not assigned to start his road work early on overtime, which the Board found to constitute "planned overtime" covered by Article 10.4(c). The Organization's position that this was planned overtime to be assigned by seniority under Article 10.4(c) or that established past practice requires that senior employees are to be given the first opportunity for road work assignments, is not supported by the language of the parties' Agreement. While there is no doubt about the importance of seniority, the Organization can point to no provision within the parties' Agreement that requires the Carrier to make straight time job assignments

within the WER classification on the basis of seniority. There is no doubt that Article 10.4(c) gives preference to planned overtime assignments on the basis of seniority. However, the Board is not convinced that the fact that an assignment is to perform road work is enough to convert any overtime that may be required on such assignment to “planned overtime.” Accordingly, the claim for overtime compensation must 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 17th day of December 2013.