

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42796
Docket No. MW-42626
17-3-NRAB-00003-140334**

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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 offer and assign overtime work of removing snow on the main line between Providence, Rhode Island and Kingstown, Rhode Island on February 9 and 10, 2013 to senior employe M. Carter and instead utilized junior employe C. Allen (Carrier’s File NEC-BMWE-SD-5210 AMT).

(2) As a consequence of the violation referred to in Part (1) above, Claimant M. Carter shall now be allowed ‘** payment of 16 hours overtime pay and 3 hours of double time pay with per-diem and incentive.***’”**

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.

At all relevant times herein, the Claimant was assigned as an EWE "A" (Stabilizer) Operator in Gang S-142, headquarters listed as Variable, Providence, RI, with a tour of duty from 9:30 P.M. to 6:00 A.M. Monday through Friday, and rest days of Saturday and Sunday. C. Allen, to whom the overtime work at issue was assigned, worked as an EWE "B" (P&H 40 Ton Crane) Operator in Gang S-062, headquarters listed as Variable, Boston, MA, with a tour of duty from 7:00 A.M. to 3:30 P.M. Monday through Friday, and rest days of Saturday and Sunday. Mr. Allen has a seniority date of September 22, 1975, as an EWE on the Northern District EWE, Machine Operator Roster and the Rule 89 Bid/Displacement List. Claimant M. Carter has a seniority date of June 17, 1982, as an EWE on the Northern District EWE, Machine Operator Roster and the Rule 89/Bid Displacement List. The relevant facts giving rise to this matter are not in serious dispute.

The record reveals that on Friday, February 8, 2013, the Carrier became aware of an impending snow storm and called the Claimant and offered him the opportunity to work overtime performing snow removal on February 8, 2012 and February 9, 2012. The Carrier maintains the Claimant declined the overtime offered which the Organization disputes. The Organization did acknowledge however that the Claimant was called for the overtime and declined, but contended that at that time of the call, the Carrier stated that the only shifts available were in the evening and at the Boston headquarters and the Claimant had expressed interest in working only at the Providence headquarters, but allegedly was told there were no openings at the Providence headquarters at that time. The Organization further maintains that there was no mention by the Carrier of working a shift out of the Providence headquarters. Believing that the Claimant had refused the overtime work, the Carrier then offered Mr. Allen the overtime work performing snow removal, which he accepted. The record reflects that when Mr. Allen reported to work at his headquarters on February 9, 2013, it was at that

time that the Carrier found it necessary to dispatch forces, including Mr. Allen, who accepted the overtime assignment for snow removal to Providence.

By letter dated February 14, 2013, the Claimant submitted a claim to the Division Engineer for payment of 16 hours pay at the overtime rate and three hours' pay at the double time rate of pay when Charles Allen performed snow removal work on overtime beginning 3:00 P.M. on February 9, 2013 until 10:00 A.M. on February 10, 2013 alleging violation of Rule 55 and the Northern District Overtime Call Order List. In their case in chief, the Organization maintains that whereas the Claimant is assigned to the Subdivision (#3 Providence, RI) and Mr. Allen is assigned in the adjacent Subdivision (#4 Boston, MA), the Claimant should have been offered the work ahead of Mr. Allen.

The Division Engineer denied the claim on April 1, 2013. Thereafter, the claim was appealed in the usual and customary manner on the property up to and including the Director-Labor Relations, the highest officer of the Carrier designated to handle such disputes. Following conference discussion of this case on October 1, 2013, the Director-Labor Relations denied the claim. Subsequently, by letter dated May 19, 2014, the National Railroad Adjustment Board advised the Carrier that the Organization had filed a notice of intent to file a submission with the Third Division in connection with this case.

Before getting into the merits of this case, we first review the Carrier's position that this Board is confronted with contradictory evidence in that, as noted above, the Carrier maintains that it offered the Claimant the opportunity to work overtime performing snow removal on February 8, 2013 and February 9, 2013, which he allegedly declined. To the contrary, the Organization maintains the Carrier only offered evening shifts at the Boston headquarters and the Claimant expressed interest in working only at the Providence headquarters. According to the Claimant and the Organization, the Claimant was told there were no openings at the Providence headquarters at that time. The Organization further contended that there was no mention by the Carrier of working a second shift out of the Providence headquarters. The Board, having carefully reviewed the record, could not find any statement from the Claimant which definitively disputed the Carrier's claimed offer of overtime to him. Accordingly, and respectfully, on the basis of this record, the Board is not in a position to resolve conflicts in facts

in the instant matter, and as a result, it is well accepted in this Industry that when such conflicts in evidence arise in essential aspects of a claim, there is no alternative but to dismiss the claim. See, e.g., NRAB Third Division Award 33416, where the Board noted in relevant part:

“The Board is therefore left to determine from the factual record what was said to the Claimant. Claimant alleges the Supervisor informed him of an 8:00 A.M. starting time. His handwritten statement is however rebutted by a signed statement of Supervisor Holmes that 'he was informed that the starting time was 7 A.M.' In applying a balance to these irreconcilable statements, we find no reasoned determination to consider one having more weight than the other. There is no evidence in this record that either party had motive to deceive, misrepresent or misportray [sic] events. As such, this Board cannot conclude that one side or the other has factual evidence so substantial as to persuade us as to their correctness. In fact, this case reduces to a dispute in facts for which we have no ability or authority to resolve. We have no alternative therefore, except to dismiss the claim.”

AWARD

Claim dismissed.

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 28th day of November 2017.