

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42797  
Docket No. MW-42627  
17-3-NRAB-00003-140356**

**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 Carrier violated the Agreement when it failed to assign Mr. K. Lowenadler to perform overtime service between Mile Posts 72.9 and 158 on November 7, 2012 and instead assigned Mr. S. Wheeler, III (Carrier's File NEC-BMWE-SD-5190 AMT).**
- (2) As a consequence of the Carrier's violation referred to in Part (1) above, Claimant K. Lowenadler must now be compensated for two (2) 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.

At all relevant times herein, K. Lowenadler, the Claimant herein, was assigned as a Foreman I&R in Gang S-852, a Maintenance Gang, headquartered in Groton, CT, with a tour of duty from 7:00 A.M. to 3:30 P.M. Tuesday through Saturday and rest days of Sunday and Monday. The Claimant has a seniority date of September 11, 2012, as a Foreman on the Northern District — Foreman, Assistant Foreman, Trackman Roster and on the Northern District Rule 89 Bid/Displacement List. The Claimant also has a seniority date of September 15, 2008, as a Trackman on the Northern District — Foreman, Assistant Foreman, Trackman Roster and on the Rule 89 Bid/Displacement List. Mr. Stanley Wheeler, Ill, who was the recipient of the overtime at issue in this case, was assigned as a Truck Driver (Van) in Gang S-646, a Surfacing Gang, headquarters listed as Variable, Midway, Groton, CT, with a tour of duty from 10:00 P.M. to 6:30 A.M. Sunday through Thursdays and rest days of Friday and Saturday. Mr. Wheeler has a seniority date of March 31, 2008, as a Truck Driver on the Northern District — Truck Driver Roster and on the Rule 89/Bid Displacement List. Mr. Wheeler also has a seniority date of January 21, 2008, as a Trackman on the Northern District — Foreman, Assistant Foreman, Trackman Roster and on the Rule 89 Bid/displacement List. On this basis of this record, it is clear that Mr. Wheeler is senior to the Claimant as a Trackman.

The facts in this matter reveal that on November 7, 2012, Mr. Wheeler and his gang (S-646) were directed to report to their assigned headquarters two hours in advance of their regular starting time at 8:00 p.m. to allow for additional travel time to the CDOT shop where they were instructed to relieve a daylight crew and perform snow duty during their regular assigned tour of duty. For the time spent traveling prior to the start of his assigned tour of duty, Mr. Wheeler was compensated at the overtime rate of pay.

By letter dated December 4, 2012, the Claimant submitted a claim on his own behalf to the Division Engineer for "all time made by Stanley Wheeler Ill," i.e. two hours' pay at the overtime rate, alleging that the Carrier violated Rules 1, 10, 55 and the Northern District Overtime Call Order/Track Department List, when the Carrier allegedly utilized a Truck Driver (Van) Stanley Wheeler Ill, from a Production gang to perform snow duty on overtime on November 7, 2012, ahead of

the Claimant, who was assigned as a Foreman in a Maintenance Gang. The Division Engineer denied the claim in letter dated January 29, 2013. Thereafter, the claim was thereafter 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 a conference discussion of this case on October 1, 2013, the Director-Labor Relations denied the appeal by letter dated November 25, 2013.

By letter dated May 29, 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 (Carrier Exhibit No. 9).

In a nutshell, it is the Organization's position that the performance of snow duty is considered maintenance work and that maintenance gang member, i.e. the Claimant has preference for this overtime ahead of a Production gang member, i.e. Mr. Wheeler. The Organization further maintains that when snow duty is performed on overtime, maintenance gangs headquartered in the subdivision are given preference for said overtime in accordance with the Maintenance section of the Northern District Overtime Call Order List.

Following a careful review of the record in this case, it is apparent that on the claim date, Mr. Wheeler and his gang (S-646) were directed to report to their assigned headquarters two hours in advance of their regular starting time at 8:00 p.m. to allow for additional travel time to the CDOT shop where they were instructed to relieve a daylight crew and perform snow duty. This much is not in dispute. It is also undisputed that for the time spent traveling prior to Mr. Wheeler's start of his regular assigned tour of duty, Mr. Wheeler was compensated at the overtime rate of pay in accordance with Rule 63 (Waiting or Traveling By Direction of Management), Example No. 4 of the Agreement. Accordingly, it is clear that Mr. Wheeler was called to report early for his regular assigned tour of duty to ensure that the gang was in place at the CDOT shop to timely relieve the dayshift employees and commence his regular assigned tour of duty for which he was compensated at the overtime rate of pay. Moreover, and relevant to the instant matter, Mr. Wheeler performed the duties of his regular assignment on the claim

date, i.e. a Truck Driver, and the Claimant has no seniority to perform the duties of a Truck Driver.

As noted above, this claim arose as a result of when the Carrier allegedly utilized a Truck Driver (Van) Stanley Wheeler III, from a Production gang to perform snow duty on overtime on November 7, 2012, ahead of the Claimant, who was assigned as a Foreman in a Maintenance Gang. As an initial note, the question involving the performance of snow duty by production gangs vs. maintenance gangs has been previously resolved by this Board in NRAB Third Division Award No. 39948 (Malin), and the Carrier's position was upheld that snow removal is considered emergency work and no craft or class of employees on the property has exclusive right to snow and ice removal by rule or by practice. In this regard, the Board noted in relevant part:

“The basic facts underlying the instant claim are not in dispute. On the date in question, the Carrier called B. Drain, A. Johnson and B. McNerny, who were regularly assigned to a production gang, on overtime to perform snow removal work and did not call the Claimant, who was regularly assigned to a maintenance gang. The employees who were called had greater seniority than the Claimant.

\*\*\*The Organization argues that snow removal work was ordinarily and customarily performed by maintenance gangs rather than production gangs. The Carrier maintains that there was no local overtime callout agreement on the New England Division requiring preference for maintenance gangs over production gangs for snow removal, but rather that a long-standing practice on the Division was to call out all employees in seniority order for snow removal. We note that such local practice was observed in Third Division Award 37818. In any event, in the absence of a local overtime callout agreement, and with conflicting assertions as to whether production gangs ordinarily and customarily performed snow removal work, the Organization had the burden to prove that maintenance gangs were preferred over production gangs for snow removal.

The Organization offered a statement from the Claimant that on December 30, 2005, his supervisor canvassed all gang members asking if they would be available for snow removal the following day, New Year's Eve, and that the Claimant responded that he was available. However, that the Carrier canvassed the maintenance gang members about their availability for overtime snow removal does not mean that the production gang members did not also customarily and ordinarily perform the same work. We conclude that the Organization failed to prove a violation of Rule 55."

Given the fact that transportation from headquarters to the work site is not work subject to the Northern District Overtime Call Order list, together with the fact that the disputed snow duty removal work was assigned to Mr. Wheeler during his regular assigned tour and that he performed the duties of his regular assignment as a Truck Driver, the Board respectfully finds no basis for the instant claim and accordingly, 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.