

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42801
Docket No. MW-42804
17-3-NRAB-00003-140517**

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 call and assign senior Truck Driver D. Battista on April 13, 2013 to perform overtime work in connection with the performance of thermite welding work at Mile Post 196 and instead utilized Welder A. Conetta (System File NEC-BMWE-SD-5237 AMT).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D. Battista shall now be compensated for eight (8) 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.

D. Battista, the Claimant herein, was assigned as a Truck Driver (CDL - Fuel) in Gang S-492B, a Material Distribution Gang, headquartered in Providence, RI, 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. Prior to his October 25, 2014 retirement, Claimant had a seniority date of May 8, 1984 as a Truck Driver on the Northern District Truck Driver Roster. Anthony Conetta, who received the overtime assignment at issue, was assigned as a Welder (Boutet/Thermite) in Gang T-300, a Boutet/Thermite Welding Gang, headquartered in Providence, RI, with a tour of duty from 9:30 P.M. to 6:00 A.M. Sunday through Thursday, and rest days of Friday and Saturday. Mr. Conetta has a seniority date of April 24, 2011 as a Welder on the Northern District Thermite Welder Group Roster and a seniority date of June 27, 2010 as a Truck Driver on the Northern District Truck Driver Roster. Based on their respective seniority dates, the Claimant was more senior to Mr. Conetta as a Truck Driver. The circumstances giving rise to the instant dispute are as follows.

On April 13, 2013, Gang T-300, of which Mr. Conetta was a member, was called to perform joint elimination on overtime. When Gang T-300 arrived at the headquarters in Providence, RI for their overtime assignment, the Carrier became aware that the Truck Driver assigned to the gang, A. Brockmiller, had not shown up for the overtime assignment. Mr. Conetta's assigned duty on April 13, 2013 into April 14, 2013 was working in the capacity of a Welder, his regularly assigned position. However, as a result of the Truck Driver's (Brockmiller's) absence, the Carrier assigned Mr. Conetta to perform the task of driving the thermite welding truck to and from the overtime assignment site in Attleboro, MA. Mr. Conetta has the CDL required to drive the thermite welding truck. The record reflects that the truck driving task performed by Mr. Conetta on the dates at issue constituted approximately 15% of Mr. Conetta's overtime, while the majority of the work performed by Mr. Conetta consisted of welding duties.

By letter dated May 2, 2013, the Claimant submitted a claim on his own behalf for eight (8) hours' pay on April 13, 2013 into April 14, 2013. The Claimant alleged that the Carrier violated Rule 55 and the Northern District Overtime Call Order Agreement when the Carrier utilized Mr. Conetta as a Truck Driver on overtime instead of Claimant. By letter dated June 10, 2013, Division Engineer

G.W. Fitter denied the claim. Thereafter, by letter dated August 1, 2013, the Organization filed a timely appeal. The Carrier denied the appeal by letter dated September 19, 2013. The Organization then appealed to the Director of Labor Relations by letter dated October 21, 2013. Following conference on January 27, 2014, the Director of Labor Relations denied the appeal by letter dated March 11, 2014.

By letter dated September 22, 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.

Following the Board's careful review of the record, and based on this unique set of facts, the instant claim should be denied. In this regard, it is undisputed that pursuant to Rule 55 and the Northern District Overtime Call Order Agreement, the Carrier properly called Mr. Brockmiller, the regular assigned Truck Driver for Gang T-300, for the overtime in question. However, Mr. Brockmiller failed to show up for the assignment. This left the Carrier with two options: It could cancel the scheduled overtime work or delay the performance of such work until another Truck Driver could be called to fill the needed overtime task. Neither option makes sense, particularly since a qualified employee (Conetta) was already on duty and could temporarily perform the incidental task of driving the truck to and from the overtime assignment site. Accordingly, given these unique set of facts, and in the absence of any bad faith on the Carrier's part, the Board finds and concludes that the Carrier's assignment of overtime to Mr. Conetta was temporary in nature and permissible under Rule 58.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of November 2017.