

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42805
Docket No. MW-42988
17-3-NRAB-00003-150203**

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 then Carrier failed to call and assign senior Foreman H. Quinn to perform overtime work at the Route 1 Bridge Relocation, Branford, Connecticut on July 23 and 24, 2013 and instead utilized junior Foreman E. Greathouse (Carrier's File NEC-BMWE-SD-5270 AMT)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant H. Quinn shall now be compensated for all hours worked by Foreman E. Greathouse on July 23 and 24, 2013 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.

H. Quinn, the Claimant herein, was assigned to a machine operator position on TLS West Class Staging Gang S-162 headquartered at Groton, Connecticut with a tour of duty from 6:00 A.M. to 4:30 P.M. Monday through Thursday with rest days of Friday, Saturday and Sunday. The Claimant has a seniority date of June 5, 1989 as a machine operator on the Northern District Roster. E. Greathouse was assigned to a machine operator position on TLS Clipping Gang S-112 headquartered at Groton, Connecticut with a tour of duty from 6:00 A.M. to 4:30 P.M. Monday through Thursday with rest days of Friday, Saturday and Sunday. Mr. Greathouse has a seniority date of March 6, 2006 as a machine operator on the Northern District Roster.

The circumstances giving rise to the instant dispute are as follows.

During the time period relevant to this dispute, the Carrier and the Organization commenced discussions pertaining to TLS work on the Northern District. Gangs that were involved in the TLS work included Clipping Gang (S-112) and West Staging Gang (S-162). During discussions of this TLS work, the parties agreed that instead of abolishing the gangs (S-112 and S-162) and the correspondent furloughing of employees, because TLS work was no longer available for either gang, both gangs would continue to perform any other available work on the Northern District.

The Carrier assigned Foreman H. Quinn to Clipping Gang (S-112) to perform work on the Route 1 Branford Project. Clipping Gang S112 was assigned to install CWR and distress rail on the Branford Project, work that they ordinarily and customarily performed when the TLS machine was in operation. During the period of the claim, the Claimant was assigned to Gang S-162 and was assigned to stock materials for the TLS during this time period for use when the TLS was returned to operation.

During the claim period, the Clipping Gang (S-112) was assigned to perform the duties during their regularly assigned tour of duty. As such, the Carrier maintained that they were assigned to perform overtime work in connection with the assignment, in accordance with Rule 55 of the Agreement.

By form dated September 1, 2013, Mr. Quinn submitted a claim on behalf of himself citing a violation of Rule 55 of the Agreement for the overtime work performed by Eugene Greathouse on July 23-24, 2013. By letter dated November 6, 2013, the Superintendent Engineering Production denied the claim. Thereafter, the claim was appealed in the usual and customary manner on 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, the Director-Labor Relations denied the appeal by letter dated August 8, 2014.

By letter dated February 13, 2015, the National Railroad Adjustment Board advised the Carrier that the Organization had filed notice of intent to file a submission with the Third Division in connection with this case.

In this claim, it is the Organization's position that the overtime assignment should have been offered to the Claimant who was senior to Mr. Greathouse. For the reasons that follow, the Board finds and concludes that this claim should be denied based on the unique facts of this case.

The record reflects that during the claim period, the Claimant was assigned to Gang S-162, A TLS West Staging Gang, and was assigned to re-stock materials for the TLS machine. On the claim dates, the Claimant was assigned a tour of duty from 6:00 A.M. to 4:30 P.M. Monday through Thursday and rest days of Friday, Saturday and Sunday. It is significant that the overtime at issue was performed beginning at 06:00 A.M. on Tuesday, July 23 and Wednesday, July 24, 2013. Whereas the Claimant was regularly assigned to work on those dates, this fact in and of itself made the Claimant unavailable for overtime on those dates. Accordingly, by claiming that the overtime opportunity should have been offered to the Claimant before offering it to Mr. Greenhouse, the Organization is essentially arguing that the assignment should have ignored which gang performed the work during the regular shifts and offer it by straight seniority on the basis that no one actually "owned" the overtime work in question. This posture ignores the requirement outlined in Rule 55 that the preference for overtime be offered first to employees who ordinarily and customarily do the work.

However, more to point, this is indeed a unique situation where the Parties, to their credit, entered into good faith discussions which resulted in an agreement that would prevent the furloughing of employees. This agreement was silent on the distribution of overtime, and accordingly, so long as there was a rational basis

behind the Carrier's decision to offer the overtime to Mr. Greenhouse, and absent a showing of bad faith on the Carrier's behalf, the Board cannot, on the basis of these unique facts, find that the Carrier violated the Agreement.

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 28th day of November 2017.