

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42810
Docket No. MW-43282
17-3-NRAB-00003-150542**

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 called and assigned Gang S645 Backhoe Operator G. Meeker to perform overtime work operating a grapple truck at the West Class yard in Hamden, Connecticut on February 25 and 26, 2014 instead of calling and assigning senior Gang S672A Grapple Truck Driver G. Richards thereto (Carrier's File NEC-BMWE-SD-5310 AMT).**
- (2) As a consequence of the above-stated violation, Claimant G. Richards shall be allowed compensation for all overtime hours worked by Mr. G. Meeker on the above-mentioned dates at the applicable overtime rate.”**

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.

Glen Richards, the Claimant herein, was assigned as a Truck Driver (CDL-Grapple) in Gang S-672A, a Maintenance Gang, headquartered at Hamden Base, CT, with a tour of duty from 7:00 A.M. to 3:30 P.M. Tuesday through Saturday, and Sunday and Monday rest days. The Claimant has a seniority date of June 1, 2009, as a Truck Driver on the Northern District Roster and a seniority date of August 31, 2009, as an EWE on the Northern District Work Equipment, Machine Operator Roster and is senior to Mr. Meeker as an EWE and as a Truck Driver.

George Meeker, the recipient of the overtime at issue, was assigned as an EWE "B" (Backhoe) Operator in Gang S-645, a C&S Digging Gang, headquartered at Berlin Train Station, 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. Meeker has a seniority date of February 1, 2010 as an EWE on the Northern District Engineer Work Equipment, Machine Operator Roster and a seniority date of September 29, 2009, as a Truck Driver on the Northern District Truck Driver Roster.

The circumstances giving rise to the instant matter are not in dispute.

The record reflects that on February 25, 2014, Mr. Meeker performed his regular assigned duties in Gang S-645 from 7:00 A.M. to 3:30 P.M., which duties continued into overtime for two hours from 3:30 P.M. to 5:30 P.M. At 5:01 P.M., the Shoreline train derailed during the middle of the evening rush hour and was headed west into New Haven when the front two wheels of the locomotive came off the track. There were 14 people aboard the train when it derailed. Employees were needed who could immediately report for service to assist in the re-railing of the equipment and repairing the track in order to restore service on the mainline track before the morning commuter rush hour. Mr. Meeker, who as noted above, was on duty and performing overtime service, was temporarily assigned, within the range of his abilities, to perform the duties of a Truck Driver for which he was compensated six hours at the overtime rate of pay (5:30 P.M. to 11:30 P.M. 2/25/14) and seven hours at the double time rate of pay (11:30 P.M. to 6:30 A.M. 2/26/14).

By letter dated March 27, 2014, the Organization submitted a claim on behalf of the Claimant to Division Engineer George Fitter for "all overtime hours" worked by Mr. George Meeker operating a Grapple Truck at West Class Yard, Hamden, CT, commencing on Tuesday night, February 25, 2014, and continuing into Wednesday morning, February 26, 2014. In its claim, the Organization maintains that the Carrier violated Rule 55 and the Northern District Overtime Call Order/Track Department (Category IV) List, when it utilized an EWE "B" Backhoe Operator, George Meeker, to perform the duties of a Grapple Truck Driver instead of calling the Claimant. The Division Engineer denied the claim in letter dated May 27, 2014. Thereafter, the claim was appealed in the usual and customary manner on the property up to and including the Senior Manager-Labor Relations, the highest officer of the Carrier designated to handle such disputes. Following conference discussion of these cases on January 16, 2015, the Senior Manager-Labor Relations denied the appeal by letter dated March 9, 2015. Subsequently, by letter dated September 10, 2015, 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.

As noted above, this is a case where the assignment of overtime to Mr. Meeker was caused by a derailment that occurred in the middle of the evening rush hour at 5:01 P.M. At the time of this mishap, the record reflects that Mr. Meeker was performing his regular assigned duties in Gang S-645 from 7:00 A.M. to 3:30 P.M., which duties continued into overtime for two hours from 3:30 P.M. to 5:30 P.M. The derailment caused delays and the Carrier was faced with securing another train to pick up the commuters who were stranded on the train for about an hour before they could be transferred to another train. This is a case where time was of the essence, requiring the Carrier to utilize employees who could immediately report for service to assist in the re-railing of the equipment and repairing the track in order to restore service on the mainline track before the morning commuter rush hour. It is clear from the record that Mr. Meeker has seniority as a Truck Driver and was fully qualified to perform the duties of a Truck Driver. Under these unique circumstances, the Board cannot conclude that there was a violation of the Agreement when Mr. Meeker was intermittently assigned to a different class of work within the range of his ability to operate the Grapple Truck to pick up and deliver material for use in performing track restoration in

accordance with Rule 58 (Assignment to Higher or Lower Rated Positions) of the Agreement. It is clear that such work was incidental to the main task of track restoration and there was no need for an additional Truck Driver on overtime.

Finally, it is clear to this Board that a derailment, particularly the type that occurred in this case, is an emergency situation that required service to be restored on an adjacent track in order not to further delay trains. Under such circumstances, the Carrier must be afforded greater latitude to deal with the task at hand.

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.