

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43061  
Docket No. MW-43612  
18-3-NRAB-00003-160393**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (Amtrak) –  
(Northeast Corridor**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated beginning on November 18, 2014 and continuing through November 19, 2014 when the Carrier assigned employee M. Cochran headquartered on the Providence Subdivision to overtime services on the Boston Subdivision instead of Mr. B. Bazne who was headquartered on the Boston Subdivision (Carrier’s File NEC-BMWE-SD-5357 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Bazne shall now be compensated an equal amount of hours earned by Mr. M. Cochran for operating the hy-rail swivel dump truck while supporting Gang S129 in the removal of the defective ties within the Boston Subdivision.”**

**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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the governing Agreement when it assigned an employee headquartered in the Providence Subdivision to perform certain overtime work on the Boston Subdivision on November 18 and 19, 2014, rather than assigning this work to the Claimant, who was headquartered in the Boston Subdivision. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant was available, qualified, and willing to perform the work in question; because the Claimant was far senior to the junior employee assigned to perform the work and the Claimant was headquartered in the Boston Subdivision where the work was performed; because the Agreement requires the Carrier to offer overtime to employees regularly assigned to the subdivision where the work is occurring; because the Carrier's defenses are without substance or merit; and because the Claimant is entitled to the requested remedy for this lost work opportunity. The Carrier contends that the instant claim should be denied in its entirety because the Carrier properly invoked the emergency doctrine that allowed a departure from the normal overtime call-out procedures, because the Carrier properly utilized an employee already on the property before calling in an additional employee on overtime, because the Organization failed to meet its burden of proof, and because the requested remedy is excessive.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it assigned a junior employee, M. Cochran, headquartered at the Providence Subdivision, to overtime services on the Boston Subdivision instead of the more senior Claimant, B. Bazne, who was headquartered at the Boston Subdivision. Therefore, this claim must be sustained.

The record reveals that on the evening of November 18, 2014, two straight-time employees did not show up for work and the Carrier was facing an emergency situation. On that same date, employee Cochran had been properly called in to work overtime to operate a thermite welding truck from 9:30 p.m. to 6:00 a.m. The Carrier moved Cochran to operate the swivel dump truck for the tie removal and replacement that was required because several concrete ties had been discovered to be defective and needed to be removed and replaced. Trains on that track were forced to operate at a restricted speed, which was causing delays.

The Carrier argues that it had an emergency situation, and it did not make sense for it to call in another employee on overtime to perform the work that was necessary in repairing the ties. It was obviously much easier for the Carrier to utilize Cochran, who was already coming in to perform overtime work, and just move him over to perform the work that had to be done here. The problem was that this is the Boston Subdivision and the Claimant was significantly senior to Cochran.

With respect to the emergency argument raised by the Carrier, the fact remains that the defective ties had been discovered at 11 a.m. on November 18, 2014, and the work that was scheduled with Cochran reporting for overtime service did not take place until 9:30 p.m. on that date. In those ten and one-half hours, the Carrier could have easily called in the Claimant to perform the work on his own subdivision and had Cochran continue to work on the overtime for which he had originally been called in that same evening.

**Rule 55 states in Subsection (a):**

**“Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority.”**

In this case, the Carrier failed to abide by the Agreements, and its emergency argument simply does not hold much water. There was sufficient time to bring in the Claimant to perform the work at issue, and Cochran could have still had his own overtime for which he had previously been called in and everybody’s rights would have been protected. Since the Carrier failed to do this, the Board has no choice other than to sustain this claim.

**AWARD**

**Claim sustained.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 2nd day of May 2018.**

**CARRIER MEMBERS' DISSENT**

**to**

**THIRD DIVISION AWARD 43061 - DOCKET 43612**

**(Referee Peter Meyers)**

The Carrier dissents to this Board's findings in the above-referenced matter. The Carrier properly invoked the emergency doctrine which allowed the Carrier to utilize an employee already on the property before calling in an additional employee on overtime. It is well-established by railroad arbitral authority that an emergency is "an unforeseen combination of circumstances which calls for immediate action" (see, e.g., Third Division Award Nos. 20527, 36982, 39499, 40077, 40862, and 41502). Here, defective ties, causing delays and loss in customer satisfaction and revenue, along with two straight time employees' failure to show up to repair the ties as soon as track time could be obtained, triggered the emergency.

The Board's finding that the emergency doctrine could not be invoked because the defective ties at issue were discovered at 11 a.m. and the work did not take place until 9:30 p.m., and that therefore there was time to call in Claimant to perform the repair, ignores the fact that it was not the defective ties alone that caused the emergency. Rather, it was the defective ties along with two employees' failure to show up to repair the ties that constituted the unforeseen combination of circumstances calling for immediate action. The Board's suggestion to call Claimant to offer overtime in advance of 9:30 p.m. suggests that the Carrier should have anticipated the straight time employees' failure to show up for work and undermines the Carrier's right to utilize and rely on straight time employees to complete assigned work.

Therefore, this Board's decision is erroneous. For these reasons, I respectfully dissent.

*Sharon Jindal*

Sharon Jindal

*Matthew R. Holt*

Matthew R. Holt

May 2, 2018