

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43064
Docket No. MW-43987
18-3-NRAB-00003-170046**

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 when the Carrier failed to assign Claimant K. Higgins to overtime service at the site of the Amtrak Train 188 derailment in Philadelphia, Pennsylvania on Sunday, May 17, 2015 between the hours of 7:00 A.M. and 7:00 P.M. and instead assigned a junior employe (System File NEC-BMWE-SD-5384 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Higgins must now be compensated for twelve (12) hours at his overtime 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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the Agreement when on May 17, 2015, the Carrier failed to assign the Claimant to overtime service at a derailment site, and instead assigned a junior employee. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the Agreement when it assigned a junior employee instead of the Claimant to perform the overtime service at issue, because the junior employee was an electric traction lineman trainee while the Claimant is an electric traction lineman, because the Carrier made no attempt to contact and assign the work at issue to the Claimant, because there is no merit to the Carrier's defenses, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Claimant was not entitled to the overtime assignment in question because he already had accepted another overtime assignment and therefore was unavailable, because the Carrier is not required to rearrange overtime assignments once they are in place, because there is no merit to the Organization's argument that the employee assigned to the overtime in question was not qualified to perform the work, because the Organization has 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 failed to meet its burden of proof that the Carrier violated the Agreement when it assigned a junior employee to overtime service at the site of the Amtrak Train 188 derailment in Philadelphia, Pennsylvania, on May 17, 2015. Therefore, this claim must be denied.

The record reveals that the Claimant was not available for the overtime assignment because, at that time, he had already committed to work overtime on another assignment. Rule 55 requires that an employee must be available for a particular overtime assignment in order to be entitled to work it. In addition, the

Electric Traction Overtime Agreement dated May 12, 1976, also requires that an employee be available in order to be entitled to overtime work. In this case, it is clear that the Claimant was not available to perform the actual work that he is complaining about being denied to him.

It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization has simply failed to meet that burden of proof. Therefore, this claim must be denied.

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 2nd day of May 2018.