

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43082
Docket No. MW-44371
18-3-NRAB-00003-170485**

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 Carrier violated the Agreement when it assigned junior EWE Operator M. Donegan to perform backhoe operator work (installing head block extensions) on overtime at the High Street Interlocking at Mile Post 142.9 in Westerly, Rhode Island on September 25, 2015 instead of calling and assigning senior EWE Operator S. Domek thereto (Carrier’s File NEC-BMWE-SD-5430 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Domek shall be compensated for eight (8) hours at the applicable 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 parties' Agreement when it assigned a junior employee, instead of the more senior Claimant, to perform certain overtime work on September 25, 2015. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimant was readily available to perform the work at issue and was the senior qualified EWE Operator headquartered within the subdivision where the overtime work occurred, because the Carrier made no attempt to secure the Claimant's services for this duty, because the Carrier failed to comply with the Agreement's seniority provisions, because the Carrier's defenses are without merit, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, because the Claimant is not aggrieved and is an improper Claimant, and because the requested remedy is time-barred and inappropriate.

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 perform backhoe operator work on overtime instead of calling the more-senior Claimant. Therefore, this claim must be denied.

The Carrier argues that the Claimant was not qualified within the meaning of Rule 55(a), which requires that employees be qualified in order to be assigned the work. The Carrier takes the position that one of the requirements of the job at issue was for the employee who was assigned to that work to possess a CDL (Class A) license at the time of the overtime assignment. That license is required to legally operate the truck on the public highway to transport the backhoe and the low boy equipment to the job site. The Claimant did not have a CDL.

Although the Organization argues that a CDL is really not necessary for that type of work, the Board finds that the Carrier has the right to set the requirements for a job. Since the Claimant failed to have the CDL license, he did not meet the qualifications for the overtime assignment, and the Board must find that the Carrier did not violate the Agreement when it assigned the junior employee to the work, who was qualified

It is fundamental that the Organization bears the burden of proof in cases of this kind. Since the Organization failed to meet that burden in this case, the Board has no choice other than to deny the claim.

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.