

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43409
Docket No. MW-44725
19-3-NRAB-00003-180206**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when the award was rendered.

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

PARTIES TO DISPUTE: (
(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior foremen to perform overtime work on October 30, November 1, 2, 3, 4, 11, 12 and 13, 2016 instead of assigning senior headquartered Track Foreman T. Rezendes thereto (Carrier’s File BMWE-01/2017 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Rezendes shall now be compensated for seventy-four (74) hours at the applicable 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.

On the dates of claim, the Carrier assigned four Track Maintenance Foremen to perform maintenance work on an overtime basis. The Claimant, who is a Foreman in the Track Sub-Department, has greater seniority than each of the employees who performed the work. Consequently, the Organization argues that he should have been called to perform this work. It cites Rule 11 Overtime, Section 4, which states:

“4. When necessary to work employees under this Rule, the senior available qualified employees will be called according to the following:

(a) Preference to overtime work on a regular work day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned to that work.

(b) Preference to overtime work other than in (a.) above, shall be to the senior available qualified employee at the headquarters who ordinarily and customarily performs such work.”

The Carrier has argued it utilized employees who were qualified to perform the work, and that the Claimant, even though senior to the other employees, was not qualified. It explains that the Claimant is an Inspection & Response Foreman who ordinarily and customarily performs track inspections, turnout inspections and responds to emergency call-outs. It says he does not ordinarily and customarily take tracks out of service as part of maintenance projects, which was the work required in this case. It is unrefuted that this is work the other employees regularly perform as part of their foreman duties.

The Organization, in this case, has the burden of proving that the Claimant was qualified to perform the work and that he ordinarily and customarily does so. It is not sufficient, under the applicable rule, that he merely be senior to the employees who worked. In our review of the record, we cannot find that the Organization has met its burden of proof.

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 18th day of January 2019.