

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43607
Docket No. MW-44468
19-3-NRAB-00003-170605**

The Third Division consisted of the regular members and in addition Referee Michael Capone 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 failed to call and assign Trackman A. Jankowski to perform rest day overtime work in connection with a rail exchange at Windsor Locks, Connecticut beginning on December 19, 2015 and instead utilized Foreman E. Cardoza (Carrier’s File NEC-BMWE-SD-5445 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Jankowski shall now 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.

On December 21, 2015, the Organization filed a claim asserting that the Carrier violated Rule 55 – Preference for Overtime Work and the Northern District Overtime Call Order when on December 19, 2015, it failed to call the Claimant for overtime to perform trackman duties. The Carrier denied the claim on March 23, 2016, asserting that the Organization did not meet its burden of proof that the Agreement was violated. It argues that there was no overtime shift made available and that another employee who was already assigned to overtime covered the open assignment. In addition, the Carrier maintains that the Claimant was not available to cover the overtime shift in dispute.

The on-property record indicates that the Carrier denied subsequent appeals from the Organization and issued its final decision on December 9, 2016. The Organization rejected the Carrier’s decision and filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

Relevant Contract Language

“RULE 55 PREFERENCE FOR OVERTIME WORK

- (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.

* * *

- (c) When it is necessary to call employees for service in advance of their bulletined working hours, or after men have been released from work commenced during bulletined hours, the same preference will be given on rest days as on other days to employees who are qualified, available and ordinarily and customarily perform the work.”

The Board finds that the Organization has not met its burden of proof that the Carrier violated the Agreement when it did not call the Claimant for overtime on December 19, 2015. The clear and unambiguous language of Rule 55 requires that to be eligible for overtime, the employee must be available. The record indicates that the overtime shift in dispute started at 10:00 PM on Saturday, December 19, 2015 and ended at 8:30 AM, Sunday, December 20, 2015. The Claimant’s regular assignment

began on Sunday, December 20 at 7:00 AM. The Claimant's is obligated by the Agreement to appear for his regular assignment. The overlap of the two assignments would result in his not being able to complete the overtime assignment rendering him unavailable. Nothing in the Agreement obligates the Carrier to leave the hours of an assignment uncovered or to use another employee to work the remaining hours due to the overlap between an overtime shift and an employee's regular assignment. We find that due to the Claimant's unavailability, he has no standing to claim a violation of Rule 55.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not provided sufficient evidence that the Carrier violated the Agreement.

AWARD

Claim dismissed.

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 17th day of May 2019.