

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43608
Docket No. MW-44529
19-3-NRAB-00003-170706

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

(Brotherhood of Maintenance of Way Employes 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 assigned managers and junior electrical technicians to perform standby overtime work at the Richmond Static Frequency Converter Station on various dates in February, March and April 2016 instead of assigning senior Gang J144 Electronic Technician E. Gluck thereto (System Files NEC-BMWE-SD-5461, NEC-BMWE-SD-5462, NEC-BMWE-SD-5463 and NEC-BMWE-SD-5464 AMT).
- (2) As a consequence of the violations referred to in Part (1) above, Claimant E. Gluck shall be compensated at the applicable overtime rate of pay for the hours stated within the initial letters of claim*. In addition, he shall receive fifteen (15) dollars for each day, as stated within the initial letters of claim.

*The initial letters of claim will be reproduced within our initial submission.”

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 April 12, 2016, the Organization filed a claim asserting that the Carrier denied the Claimant overtime opportunities at the Richmond Static Frequency Converter Station (hereinafter referred to as “Richmond Station”) when it assigned other employees to work the overtime assignments on numerous occasions in February, March and April 2016. (The parties combined four separate claims filed by the Claimant, which are presented in one single record to the Board). The Organization maintains that Rule 55 – Preference for Overtime Work governs the dispute. The Carrier denied the claim on June 3, 2016, asserting that the Organization did not meet its burden of proof that the Agreement was violated. It argues that the Claimant was not qualified to work in Richmond Station and therefore, he was not eligible for the overtime.

The on-property record indicates that the Carrier denied subsequent appeals from the Organization and issued its final decision on January 26, 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 assign overtime to the Claimant at the Richmond Station. The clear and unambiguous language of Rule 55 requires that, to be eligible for overtime, the employee must be qualified. The documentary evidence indicates that the Claimant was still in training on the dates cited in the claim and not fully qualified to work alone in Richmond Station. Where not limited by the Agreement, the Carrier has the discretion to set qualification standards for each work classification.

The Organization’s strenuous argument regarding qualifications of the other employees who worked the overtime does not satisfy its burden of proof. The Organization is unable to show that the Claimant was qualified and therefore, eligible for the overtime assigned to other employees. Without such evidence, there is no violation of Rule 55.

The dispute over the Carrier’s failure to provide the Claimant with the required training to qualify is not before the Board. The claim does not allege that the Carrier violated the Agreement’s training provisions or any other applicable rule. The claim here is for lost overtime opportunities as governed by Rule 55. We find no such evidence in the record to support the claim.

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 denied.

**Form 1
Page 4**

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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.